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U.S. HOUSE OF REPRESENTATIVES

OVERVIEW AND COMPILATION OF U.S. TRADE STATUTES

JANUARY 6, 1987

Prepared for the use of the Committee on Ways and Means by its staff

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LETTER OF TRANSMITTAL

COMMITTEE ON WAYS AND MEANS,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 6, 1987.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: In 1984 the Committee first published a staff document entitled "Overview of Current Provisions of U.S. Trade Law" for the use of Committee members and others interested in a concise summary of the various statutory provisions relating to foreign trade. This document received broad recognition both within the Congress and throughout the international trading community as a useful tool for better understanding the scope and content of our trade laws.

The staff has now prepared a more complete working document entitled "Overview and Compilation of U.S. Trade Statutes". This document contains two parts: Part I is a revised version of our earlier overview, including a description of changes in these laws since 1984. It is current through the close of the 99th Congress. Part II contains an updated text of these laws which integrates numerous separate acts of Congress into a single statutory compilation. To our knowledge, this is the first such compilation, and we believe the members of this Committee will find it extremely useful as they consider amendments to these laws.

Considering the increased focus on trade matters by this Committee and the likelihood that trade legislation will receive priority attention during the 100th Congress, the staff believes this new document can serve as a useful resource to members, staff, other Government officials, and the general public.

The statutory authorities selected are the major provisions of Federal law which are directly related to the conduct of U.S. international trade. The compilation is not meant to be a comprehensive treatise of every trade-related law or program, nor does it cover provisions to regulate domestic commerce. The laws and programs which are within the jurisdiction of the Committee on Ways and Means are the main focus of this document and are discussed in greater detail. In addition, some of the laws and programs described may be within the jurisdiction of other committees of the House. These provisions are included in order to provide a complete survey of the principal trade authorities.

The document has been prepared by our trade staff with assistance from the Congressional Research Service and various Government agencies, and is a first attempt to consolidate and summarize a varied and evolving set of statutory material. As such, any suggestions on how to improve the document as a reference tool would, of course, be appreciated. Appropriate suggestions for improvements either in content or in format will be reflected in later versions of this publication.

Sincerely yours,

JOSEPH K. DOWLEY,
Chief Counsel.

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PREFACE

The role of Congress in formulating international economic policy and regulating international trade is based on a specific Constitutional grant of power. Article I of the U.S. Constitution sets forth the various powers and responsibilities of the legislature. Article I, section 8 lists certain specific express powers of the Congress. Among these express powers are the powers:

> "to lay and collect taxes, duties, imposts and excises . . . [and] to regulate commerce with foreign nations, and among the several states. . . ."

The Congress therefore is the fundamental authority responsible for Federal Government regulation of international transactions. Within the House of Representatives, jurisdiction over trade legislation lies in the Committee on Ways and Means, based on its jurisdiction over taxes, tariffs, and trade agreements. Throughout the history of U.S. trade law and policy, the role of the Committee on Ways and Means has been at the forefront of its development, ranging from regulation of tariff affairs, to regulation of nontariff trade barriers such as quotas and standards, regulation of unfair trade practices such as dumping, subsidization, or counterfeiting, provision of temporary relief from import competition and adjustment assistance, providing for bilateral and multilateral trade agreements with foreign trading partners, and responsibility for authorizing and overseeing the departments and agencies charged with implementation of the trade laws and programs.

The difficulties of retaining and exercising full control over international trade matters within the legislative branch were recognized by Congress shortly after enactment of the Smoot Hawley Tariff Act of 1930. In 1934, the Congress enacted the Reciprocal Trade Agreements Act which delegated to the President authority to negotiate international trade agreements for the reduction of tariffs. This Act, which marked the beginning of the trade agreements program for the United States, represented the first significant delegation of authority from Congress to the President with respect to international trade policy.

Since 1934, the delegation of authority from Congress to the President has varied in scope and degree, reflecting congressional concern over maintaining careful control of international trade policy. When the trade agreements negotiating authority granted to the President expired in 1967, for example, it was not renewed again until 1974. In the Trade Act of 1974, Presidential negotiating authority was substantially revised, extended to nontariff as well as tariff negotiations, and made subject to specific consultation and notification requirements both prior to and during the course of negotiation.

Due to the central role of Congress in formulating international economic policy, an understanding of U.S. international trade law and policy must begin with the statutory authorities and programs which provide the foundation for our trade policy. This document provides two essential tools for those interested in obtaining a better understanding of U.S. trade law and policy. Part I contains a general overview of current provisions of our trade laws. This overview was prepared by the staff of the Subcommittee on Trade and provides a thorough yet understandable explanation of how these laws operate. Part II contains a compilation of the actual text of these laws, as amended. This updated statutory compilation incorporates all major provisions of U.S. trade law and includes *all* amendments to these laws as of the beginning of the 100th Congress. While this integrated text should not be treated as a substitute for official public laws or the United States Code, it is an accurate and highly useful document which integrates numerous separate Acts of Congress into one text. We hope this will prove useful to official policymakers as well as the interested public.

PART I: OVERVIEW

Chapter 1: TARIFF AND CUSTOMS LAWS

Tariff Schedules of the United States

Historical background

The Tariff Schedules of the United States (TSUS) was created by section 201 of the Tariff Classification Act of 1962[1] and became effective on August 31, 1963. The TSUS replaced titles I and II (dutiable and duty-free lists) of the Tariff Act of 1930 (19 U.S.C. 1201), which has long been considered lacking in structure and in need of modernization and simplification.

Because of the growing complexity of the tariff schedules and other provisions directly connected with the assessment of customs duties, title I of the Customs Simplification Act of 1954[2] required the U.S. Tariff Commission to undertake a long-term project of reviewing the tariff schedules and compiling a revision and consolidation of all of their relevant provisions.[3] The final report on the project (tariff classification study) was submitted on November 15, 1960, and followed by several supplemental reports. These reports formed the basis for the new TSUS in section 201 of the Tariff Classification Act of 1962.

Structure of the schedules

The current TSUS consists of: seven schedules of imported articles grouped and classified according to their physical affinity to each other;[4] one schedule (Schedule 8), containing special classification provisions setting out specific circumstances in which articles listed in Schedules 1 through 7 may be imported totally or partially free of duty; and an Appendix, containing temporary modifications of duty-rate provisions of the first seven schedules, put into effect either by legislation or by executive action authorized under certain conditions by various trade laws.

---

[1] Public Law 87-456, approved May 24, 1962.

[2] Act of September 1, 1954, ch. 1213.

[3] The statutory purposes of this revision were:

"(1) Establish schedules of tariff classifications which will be logical in arrangement and terminology and adapted to the changes which occurred since 1930 in the character and importance of articles produced in and imported into the United States and in the markets in which they are sold.

"(2) Eliminate anomalies and illogical results in the classification of articles.

"(3) Simplify the determination and application of tariff classifications." (Sec. 101(a); Customs Simplification Act of 1954).

[4] The seven schedules are: (1) Animal and vegetable products; (2) Wood and paper, printed matter; (3) Textile fibers and textile products; (4) Chemicals and related products; (5) Nonmetallic minerals and products; (6) Metals and metal products; (7) Specified products, miscellaneous and nonenumerated products.

Each schedule consists of several (numbered) parts and these, in turn, of several (alphabetized) subparts, ultimately containing individual tariff items. A tariff item ("TSUS item") is a five-digit numbered entry giving the description of an article, or a group of closely related articles, the rates of duty (or duty-free status) applicable to it, and other information needed for the proper assessment of import duties on that item.

Additional information, requirements, or definitions—largely enacted as separate statutes rather than as amendments to the Tariff Act of 1930, or promulgated by Executive action under broader statutory authority—applicable to all or several items in a subdivision (schedule, part, or subpart) of the TSUS, are set out at the head of such subdivision as "headnotes." Similarly, "general headnotes and rules of interpretation," applicable generally to the provisions of the TSUS, are set out at the beginning of the TSUS, preceding the schedules themselves.

The TSUS is no longer published as a separate document, but is subsumed in the Tariff Schedules of the United States Annotated (see below). Its publication as section 1201 of title 19 of the United States Code (with annual amendments) also ceased (except for general headnotes and rules of interpretation) with the 1979 supplement to the 1976 edition of the United States Code.

For statistical purposes, most (five-digit) TSUS items are subdivided into several statistical items containing two additional digits ("statistical suffix") in the entry number and more detailed descriptions; statistical suffixes are also added to TSUS items that are not subdivided. As appropriate, statistical headnotes are added to the schedules or to general headnotes. Tariff schedules containing these statistical annotations are known as the Tariff Schedules of the United States Annotated (TSUSA).

The TSUSA is published "at appropriate intervals" pursuant to section 201 of the Tariff Classification Act of 1962 by the U.S. International Trade Commission and contain the legal text of the TSUS, as amended, together with statistical annotations, explicitly mandated by section 484(e) of the Tariff Act of 1930, as amended.[5] At present, their publication (in loose-leaf format) is annual, with several supplements during the year.

The TSUSA has a tabular format containing seven columns, each column providing certain tariff information applicable to the tariff item in question. A sample page of the TSUSA is attached as Annex 1.

The first column, "Item," contains the five-digit TSUS item number identifying the article or group of articles for tariff purposes. Each TSUS item is subject to its own duty treatment.

The second column, "Stat. Suffix," contains two digits whereby a TSUSA item is numerically identified for statistical purposes. For TSUS items that are not statistically subdivided, the suffix 00 is used. This statistical refinement does not affect the duty status of an article: all seven-digit TSUSA items having the first five digits in common are subject to the same duty treatment.

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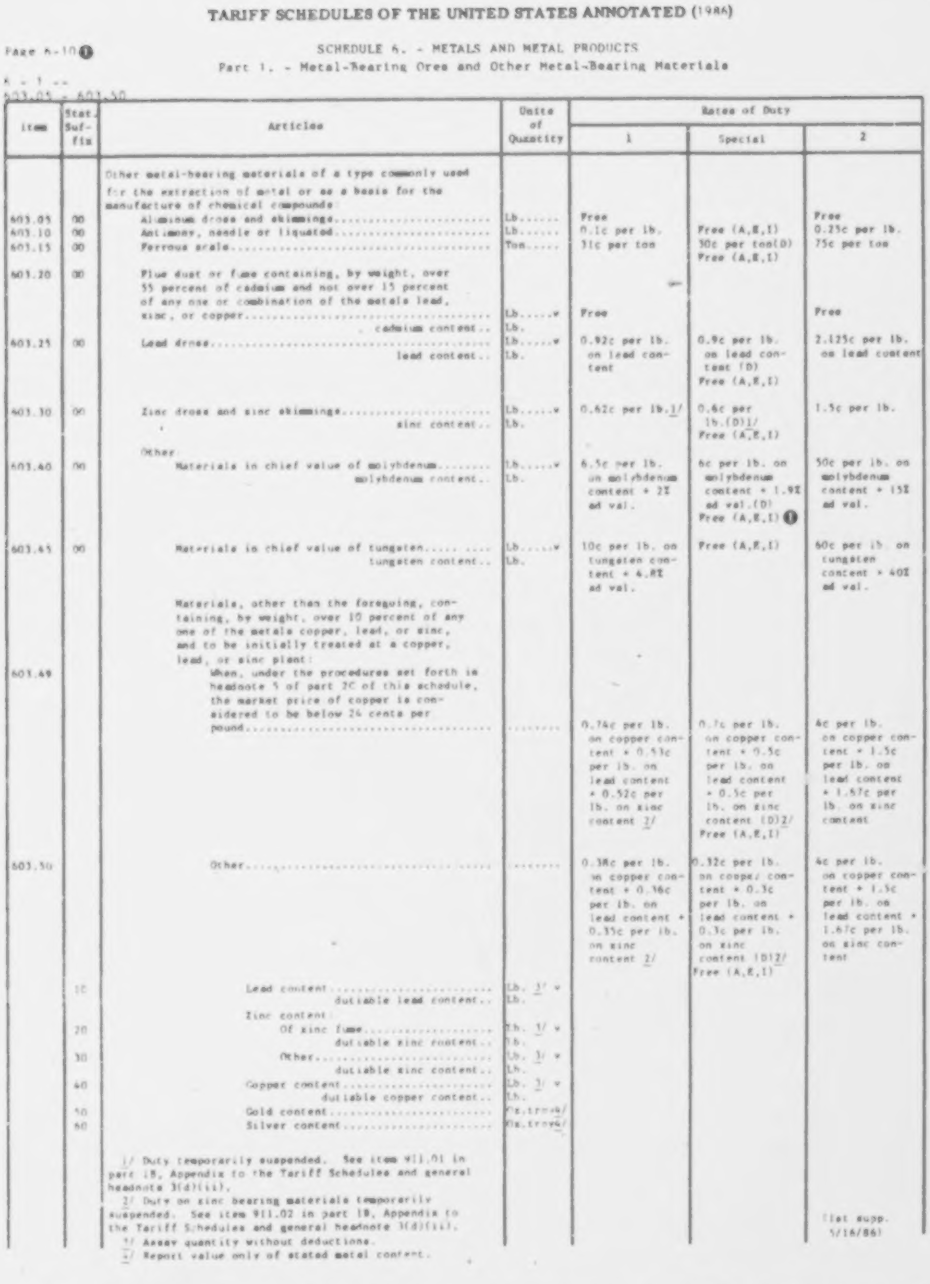
[5] 19 U.S.C. 1484(e).



TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986)

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6 - 1 --
603.05 - 603.50

SCHEDULE 6. - METALS AND METAL PRODUCTS
Part 1. - Metal-Bearing Ores and Other Metal-Bearing Materials

Item	Stat. Suffix	Articles	Units of Quantity	Rates of Duty		
				1	Special	2
		Other metal-bearing materials of a type commonly used for the extraction of metal or as a basis for the manufacture of chemical compounds:				
603.05	00	Aluminum drosses and skimmings	Lb.	Free		Free
603.10	00	Antimony, needle or liquated	Lb.	0.1¢ per lb.	Free (A,E,I)	0.25¢ per lb.
603.15	00	Ferrous scale	Ton	31¢ per ton	30¢ per ton (D) Free (A,E,I)	75¢ per ton
603.20	00	Flue dust or fume containing, by weight, over 55 percent of cadmium and not over 15 percent of any one or combination of the metals lead, zinc, or copper cadmium content	Lb. v Lb.	Free		Free
603.25	00	Lead dross lead content	Lb. v Lb.	0.92¢ per lb. on lead content	0.9¢ per lb. on lead content (D) Free (A,E,I)	2.125¢ per lb. on lead content
603.30	00	Zinc dross and zinc skimmings zinc content	Lb. v Lb.	0.62¢ per lb. 1/	0.6¢ per lb. (D) 1/ Free (A,E,I)	1.5¢ per lb.
		Other:				
603.40	00	Materials in chief value of molybdenum molybdenum content	Lb. v Lb.	6.5¢ per lb. on molybdenum content + 2% ad val.	6¢ per lb. on molybdenum content + 1.9% ad val. (D) Free (A,E,I) ①	50¢ per lb. on molybdenum content + 15% ad val.
603.45	00	Materials in chief value of tungsten tungsten content	Lb. v Lb.	10¢ per lb. on tungsten content + 4.8% ad val.	Free (A,E,I)	60¢ per lb. on tungsten content + 40% ad val.
		Materials, other than the foregoing, containing, by weight, over 10 percent of any one of the metals copper, lead, or zinc, and to be initially treated at a copper, lead, or zinc plant:				
603.49		When, under the procedures set forth in headnote 5 of part 2C of this schedule, the market price of copper is considered to be below 24 cents per pound		0.74¢ per lb. on copper content + 0.53¢ per lb. on lead content + 0.52¢ per lb. on zinc content 2/	0.7¢ per lb. on copper content + 0.5¢ per lb. on lead content + 0.5¢ per lb. on zinc content (D) 2/ Free (A,E,I)	4¢ per lb. on copper content + 1.5¢ per lb. on lead content + 1.67¢ per lb. on zinc content
603.50		Other		0.38¢ per lb. on copper content + 0.36¢ per lb. on lead content + 0.35¢ per lb. on zinc content 2/	0.32¢ per lb. on copper content + 0.3¢ per lb. on lead content + 0.3¢ per lb. on zinc content (D) 2/ Free (A,E,I)	4¢ per lb. on copper content + 1.5¢ per lb. on lead content + 1.67¢ per lb. on zinc content
	10	Lead content dutiable lead content	Lb. 3/ v Lb.			
		Zinc content:				
	20	Of zinc fume dutiable zinc content	Lb. 3/ v Lb.			
	30	Other dutiable zinc content	Lb. 3/ v Lb.			
	40	Copper content dutiable copper content	Lb. 3/ v Lb.			
	50	Gold content	Oz. troy 4/			
	60	Silver content	Oz. troy 4/			

1/ Duty temporarily suspended. See item 911.01 in part 1B, Appendix to the Tariff Schedules and general headnote 3(d)(ii).
2/ Duty on zinc bearing materials temporarily suspended. See item 911.02 in part 1B, Appendix to the Tariff Schedules and general headnote 3(d)(ii).
3/ Assay quantity without deductions.
4/ Report value only of stated metal content.

(1st supp. 5/16/86)

The third column, "Articles," contains a detailed description of the articles falling within each TSUS and TSUSA item.

The fourth column, "Units of Quantity," shows the unit in which the quantity of the article imported is to be reported for statistical purposes. In many instances, the unit of quantity is also the basis for the assessment of the duty. For several categories of products, two different reporting units must be used (e.g., for textiles, weight and square yardage; for apparel, weight and number; for metal-bearing ores, gross weight and metal content weight), the second unit of quantity usually being the basis for an import administration action (e.g., import quota, specific duty base). An "X" in this column denotes TSUSA items for which a unit of quantity need not be reported, and for which statistics are being compiled only on the basis of value.

The fifth, sixth, and seventh columns have a common heading of "Rates of Duty," and are individually marked "1", "Special", and "2", respectively. These are the columns in which the rates of duty (or duty-free status) generally applicable to a TSUS item are set forth. How they apply to imported products of particular countries is described below under the heading "Applicable duty treatment."

A rate of duty generally has one of two basic forms: ad valorem or specific. An ad valorem rate is expressed in terms of a percentage (e.g., 6.5 percent) of the value (hence, ad valorem=according to value) of the imported article; a specific rate is expressed in terms of a stated amount payable on a unit of quantity of the imported article (e.g., 17 cents per pound). In many instances, a "compound" or "mixed" rate of duty is used; that is, a combination of a specific rate and an ad valorem rate (e.g., 19 cents per pound plus 12 percent ad valorem).

Schedule 8 consists of special classification provisions permitting, in specific circumstances, totally (or in a few cases, partially) duty-free importation of any otherwise dutiable items listed in the first seven schedules. The description of TSUS items in this schedule sets out the circumstances in which an importation takes place that confers upon it duty-free status. Schedule 8, for example, sets forth special duty treatment for articles reimported after having been exported from the United States; articles subject to various personal exemptions, such as those applicable to immigrants, foreign visitors, returning U.S. residents, foreign officials, and some other categories for entrants; articles imported by the U.S. or foreign governments, or by religious, scientific, educational, or other qualifying institutions; and samples, and articles admitted under bond.

Finally, the Appendix to the Tariff Schedules contains provisions, mostly of a temporary nature, that modify or otherwise affect the tariff treatment of specific articles in Schedules 1 through 7. The Appendix lists additional duties, and suspensions or reductions of duties, applied temporarily to certain TSUS items by legislative action; temporary executive modifications (increases or decreases) of duty rates pursuant to trade agreements or other legislation; and additional import restrictions (absolute quotas or import fees) proclaimed by the President pursuant to section 22 of the Agricultural Adjustment Act. The Appendix, however, does not list any antidumping or countervailing duties imposed under the authority of the Tariff Act of 1930, as amended, to eliminate the unfair price advantage of an import due to underpricing or foreign subsidization. Such duties are listed in the relevant parts of the Code of Federal Regulations.

Applicable duty treatment

Column 1 (MFN).—The rates of duty in column 1 of the TSUS are applicable to imports from countries that have been extended most-favored-nation (MFN) (nondiscriminatory) trade treatment by the United States, unless such imports are eligible for duty-free treatment under one of the preferential schemes discussed below (e.g., the GSP, or the Caribbean Initiative). The rates in Column 1 are concessional and have been set through reductions of full statutory rates in negotiations with other countries.

Column 2.—The rates of duty in Column 2 apply to imports from countries that have been denied MFN status by the United States (listed in general headnote 3(d)); these are full statutory rates as enacted by the highly restrictive Tariff Act of 1930. The products of the following countries are currently subject to Column 2 rates of duty:

Afghanistan
Albania
Bulgaria
Cuba
Czechoslovakia
Estonia
German Democratic·Republic and East Berlin
Indochina (any part of Cambodia, Laos, or Vietnam which may be under Communist domination or control)
Korea (any part of which may be under Communist domination or control)
Kurile Islands
Latvia
Lithuania
Outer Mongolia
Polish People's Republic
Southern Sakhalin
Tanna Tuva
Union of Soviet Socialist Republics and the area in East Prussia under the provisional administration of the Union of Soviet Socialist Republics

Special column.—General headnote 3(e) to the TSUS provides for special tariff treatment of covered products imported from designated countries which are eligible for such treatment under one or more programs. These programs and the corresponding symbols by which they are indicated in the "Special" column are as follows:

Generalized System of Preferences [GSP]	A or A*
Least Developed Developing Countries [LDDC's]	D
Caribbean Basin Economic Recovery Act [CBERA]	E or E*
United States-Israel Free Trade Area Implementation Act of 1985.	I

The letters A, D, E, and/or I in the column indicate eligibility for preferential treatment under the respective program; the absence of any letter indentifies items not eligible for such treatment under that program. In the case of GSP or CBERA, the symbol A* or E*, respectively, indicates that, although the item is generally eligible for duty-free treatment, such treatment does not apply to imports coming from one or more of the beneficiary countries designated for that program in general headnote 3(e).

Further detail on each of these programs will be developed in separate sections following a discussion of several other important duty exemptions and preferences included in the TSUS.

Special duty exemptions and preferences

This section will briefly discuss TSUS items 800.00, 806.20, 806.30, and 807.00, which relate to various categories of American products which are returned to the United States after undergoing varying degrees of processing while abroad; general headnote 3(a), which provides for preferential tariff treatment for products of U.S. insular possessions; and duty exemptions for certain automotive imports from Canada and civil aircraft products imported from MFN countries.

American goods returned (TSUS item 800.00).—American goods may be returned to the United States duty-free under TSUS item 800.00 if they are not advanced in value or improved in condition while abroad. The courts have interpreted this provision to allow duty-free entry of American goods which had been exported for sorting, separating (e.g., by grade, color, size, etc.), culling out, and discarding defective items and repackaging in certain containers, so long as the article itself has not been the object of advancement in value or improvement in condition while abroad.

American goods repaired or altered abroad (TSUS item 806.20).—TSUS item 806.20 provides that goods exported from the United States for repairs or alterations abroad are subject to duty upon their reimportation into the United States (at the duty rate applicable to the imported article) only upon the value of such repairs or alterations. The provision applies to processing such as restoration, renovation, adjustment, cleaning, correction of manufacturing defects, or similar treatment that changes the condition of the exported article but does not change its essential character. The value of the repairs or processing for purposes of assessing duties is generally determined, in accordance with headnote 2(a) to part 1B of schedule 8, by—

(1) the cost of the repairs or alterations to the importer, or

(2) if no charge is made, the value of the repairs or alterations, as set out in the entry documents.

However, if the customs officer finds that the amount shown in the entry document is not reasonable, the value of the repairs or alterations will be determined in accordance with the valuation standards set out in section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a).[6]

American metal articles processed abroad (TSUS item 806.30).—Item 806.30 provides that an article of metal (except precious metal) which is exported from the United States for processing abroad may be subject to duty on the value of the processing only upon its return to the United States. To qualify for item 806.30 treatment, the exported article (1) must have been manufactured or subjected to a process of manufacture in the United States; and (2) must be returned "for further processing" in the United States by or for the account of the original exporter.

The term "processing" refers to such operations as melting, molding, casting, machining, grinding, drilling, tapping, threading, cutting, punching, rolling, forming, plating, and galvanizing.

As in the case of articles imported under item 806.20 (repairs or alterations), discussed above, the duty on metal articles processed abroad is assessed against the value of such processing, determined in accordance with Schedule 8, Part 1B, headnote 2(a).

American components assembled abroad (TSUS item 807.00).—Articles assembled abroad from American-made components may be exempt from duty on the value of such components when the assembled article is imported into the United States under TSUS item 807.00. This provision enables American manufacturers of relatively labor-intensive products to take advantage of low-cost labor and fiscal incentives in other countries (usually less developed countries) by exporting American parts for assembly in such countries and returning the assembled products to the United States with partial exemption from U.S. duties.

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[6] 19 U.S.C. 1401a.

Item 807.00 applies to articles assembled abroad in whole or in part of fabricated components, the product of the United States, which—

(1) were exported in condition ready for assembly without further fabrication;

(2) have not lost their physical identity in such articles by change in form, shape, or otherwise; and

(3) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting.

To be eligible for item 807.00 the exported article must be a fabricated U.S. component, i.e., a manufactured article ready for assembly in its exported condition, except for operations incidental to the assembly process. Whereas, integrated circuits, compressors, zippers, and precut sections of a garment are examples of fabricated components, uncut bolts of cloth, lumber, sheet metal, leather, and other materials exported in basic shapes and forms are not considered to be fabricated components for this purpose.

To be considered U.S. components, the articles do not necessarily have to be fabricated from articles or materials originating in the United States. If a foreign article or material undergoes a process of manufacture in the United States resulting in its "substantial transformation" into a new and different article, having a distinctive name, character, or use, then the component that emerges may qualify as a product of the United States for purposes of item 807.00.

The assembly operations performed abroad include any method used to join solid components together, such as welding, soldering, gluing, sewing, or fastening with nuts and bolts. Mixing, blending, or otherwise combining liquids, gases, chemicals, food ingredients, and amorphous solids with each other or with solid components is not regarded as assembling for purposes of item 807.00.

The rate of duty that applies to the dutiable portion of an assembled article is the same rate that would apply to the imported article. The assembled article is also treated as being entirely of foreign origin for purposes of any import quota or similar restriction applicable to that class of merchandise, and for purposes of country of origin marking requirements. All requirements regarding labeling, radiation standards, flame retarding properties, etc., that apply to imported products apply equally to item 807.00 merchandise.

An article imported under item 807.00 is treated as a foreign article for appraisement purposes. That is, the full appraised value of the article must first be determined under the usual appraisement provisions. The dutiable value, however, is determined by deducting the cost or value of the American-made fabricated components from the appraised value of the assembled merchandise.

Products from U.S. insular possessions (General Headnote 3(a)).—Imports from the Virgin Islands, Guam, American Samoa, Wake Island, Kingman Reef, Johnson Island, and Midway Islands are entitled to duty-free entry under certain conditions, designed to promote the economic development of these U.S. insular possessions. This provision does not apply to Puerto Rico which is part of the "customs territory of the United States."

As provided in General Headnote 3(a) of the Tariff Schedules, an article imported directly from a possession is exempt from duty if—

(1) it was grown or mined in the possession; or

(2) it was produced or manufactured in the possession, and the value of foreign materials contained in that article does not exceed 70 percent of its total value. Materials of U.S. origin are not considered foreign for this purpose. Likewise, materials that could be imported into the United States duty-free (except from Cuba or the Philippines) are not counted as foreign materials for purposes of the 70 percent foreign-content limitation; or

(3) in the case of any article excluded from duty-free treatment under section 213(b) of the Caribbean Basin Economic Recovery Act, it was produced or manufactured in the possession, and the value of foreign materials does not exceed 50 percent of its total value.

In addition, an article previously imported into the United States with duty or tax paid thereon, shipped to a possession without benefit of remission, refund, or drawback of such duty or tax, may be returned to the United States duty-free. General Headnote 3(a) also provides that articles from insular possessions are entitled to no less favorable duty treatment than that accorded to eligible articles under the Generalized System of Preferences, described below.

In applying the 70 percent foreign-materials test, Customs determines the value of the foreign materials by their actual purchase price, plus the transportation cost to the possession, excluding any duties or taxes assessed by the possession and excluding any post-landing charges. The value thus determined is then compared with the appraised value of the products imported into the United States, determined in accordance with the usual appraisement methods. If the differential is 30 percent or more, the foreign materials limitation is satisfied. This procedure is set out in 19 C.F.R. 7.8(d).

As previously noted, the product imported from a possession must have been produced or manufactured there (unless grown or mined there). It is not sufficient for foreign goods to be shipped to a possession for nominal handling or manipulation, followed by a price mark-up to meet the 70 percent test.

Canadian motor vehicles and original equipment therefor (headnote 2, part 6B, schedule 6).—Throughout the TSUS are a number of specific provisions which provide for duty-free treatment of imported motor vehicles and specified original equipment parts that qualify as "Canadian articles" under General Headnote 3(c) and headnote 2 to part 6B of schedule 6. These provisions were added to the TSUS pursuant to the Automotive Products Trade Act of 1965,[7] which was enacted to implement the U.S.-Canadian Automotive Agreement. The purpose of the Agreement was to create a North American common market for motor vehicles and original equipment parts (replacement parts are not covered).

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[7] Public Law 89-283, 19 U.S.C. 2001, et seq.

The term "Canadian article" refers to an article produced in Canada but does not include any article produced with non-Canadian or non-U.S. materials if the CIF value (Canadian port)[8] of such foreign-source materials exceeds 50 percent of the appraised value of the article imported into the United States.

Most of the product categories established by the Automotive Products Trade Act are applicable to "original motor-vehicle equipment," which is defined in headnote 2, part 6B, schedule 6 as a Canadian fabricated component intended for use as original equipment in the manufacture of a motor vehicle in the United States and which was obtained from a Canadian supplier pursuant to "a written order, contract, or letter of intent of a bona fide motor-vehicle manufacturer in the United States." In turn, the phrase "bona fide motor-vehicle manufacturer" is defined as a person determined by the Secretary of Commerce to have produced at least 15 motor vehicles in the previous 12 months and to have the capacity to produce at least 10 motor vehicles per week.

Civil aircraft products (headnote 3, part 6C, schedule 6).—Title VI of the Trade Agreements Act of 1979 gave the President the authority to proclaim new headnote 3 to part 6C of schedule 6 and to make specific headnotes to designated TSUS items in order to implement the Tokyo Round Agreement on Trade in Civil Aircraft and to provide duty-free treatment, in accordance with the annex to the Agreement, for the civil aircraft articles described therein. These changes were implemented by Presidential Proclamation 4707 of December 11, 1979.

The provisions work much like those implementing the U.S.-Canadian automotive pact in that a number of specific product breakouts are spread throughout the TSUS providing duty-free treatment for specifically described articles which are "certified for use in civil aircraft" in accordance with headnote 3 to part 6C of schedule 6. That headnote defines "civil aircraft" as all aircraft other than that purchased by the Department of Defense or the U.S. Coast Guard and sets out the three criteria for an imported aircraft product to qualify for duty-free treatment. The importer must certify that—

(1) the article has been imported for use in civil aircraft;
(2) that it will be so used; and
(3) that the article has been approved for such use by the Administrator of the Federal Aviation Administration or by the airworthiness authority in the country of exportation (if the FAA recognizes it as an acceptable substitute) or that application for such approval has been made to and accepted by the FAA.

Section 234 of the Trade and Tariff Act of 1984 enacted on October 30, 1984, gave the President the authority to make additional tariff breakouts in designated TSUS items in order to provide duty-free coverage comparable to the expanded coverage provided by all other signatories to the Aircraft Agreement pursuant to the extension of the Annex to the Agreement agreed to in Geneva on October 6, 1983.

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[8] The term CIF stands for "costs, insurance and freight" and means that the value of the article is based on its landed cost at the Canadian port.

Generalized System of Preferences

TITLE V OF THE TRADE ACT OF 1974, AS AMENDED

The concept of a Generalized System of Preferences (GSP) was first introduced in the United Nations Conference on Trade and Development (UNCTAD) in 1964. Developing countries asserted that one of the major impediments to accelerated economic growth and development was their inability to compete on an equal basis with developed countries in the international trading system. Through tariff preferences in developed country markets, the LDCs claimed they could increase exports and foreign exchange earnings needed to diversify their economies and reduce dependence on foreign aid.

After several international meetings and long internal debate, in 1968 the United States joined other industrialized countries in supporting the concept of GSP. As initially conceived, GSP systems were to be: (1) temporary, unilateral grants of preferences by developed to developing countries; (2) designed to extend benefits to sectors of developing countries which were not competitive internationally; and (3) designed to include safeguard mechanisms to protect domestic industries sensitive to import competition from articles receiving preferential tariff treatment. In the early 1970's, 19 other members of the Organization for Economic Cooperation and Development (OECD) also instituted and have since renewed GSP schemes.

In order to implement their GSP systems, the developed countries obtained a waiver from the most-favored-nation (MFN) clause of Article I of the General Agreement on Tariffs and Trade (GATT), which provides that trade must be conducted among countries on a nondiscriminatory basis. A 10-year MFN waiver was granted in June 1971 through the "enabling clause" of the Texts Concerning a Framework for the Conduct of World Trade concluded in the Tokyo round of GATT Multilateral Trade Negotiations. The enabling clause, which has no expiration date, provides the legal basis for "special and differential" treatment for developing countries. The enabling clause also requires that developing countries accept the principle of graduation, under which such countries agree to assume "increased GATT responsibilities as their economies progress."

U.S. GSP basic authority

Statutory authority for the U.S. Generalized System of Preferences is set forth in title V of the Trade Act of 1974, as amended.[9] Authority to grant GSP duty-free treatment on eligible articles from beneficiary developing countries (BDCs) became effective under that Act on January 3, 1975, for a 10-year period expiring on

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[9] Public Law 93-618, approved January 3, 1975, 19 U.S.C. 2461-2465.

January 3, 1985. The program was actually implemented on January 1, 1976 under Executive Order 11888. Relatively minor amendments to the statute were made under section 1802 of the Tax Reform Act of 1976 [10] and section 1111 of the Trade Agreements Act of 1979.[11] Title V of the Trade and Tariff Act of 1984 [12] renewed the GSP program for 8½ years until July 4, 1993, with significant amendments effective on January 4, 1985, particularly in the criteria for designating beneficiary countries and limitations on duty-free treatment.

The U.S. Trade Representative (USTR) administers the GSP program through an interagency committee to advise the President on GSP product and country eligibility.

Section 501 of the Trade Act of 1974 as amended authorizes the President to provide GSP duty-free treatment on any eligible article from designated beneficiary developing countries, subject to certain conditions and limits, having due regard for (1) the effect of such action on furthering the economic development of developing countries through the expansion of their exports; (2) the extent other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences on their products; (3) the anticipated impact on U.S. producers of like or directly competitive products; and (4) the extent of the BDC's competitiveness with respect to eligible articles. The program currently provides duty-free treatment on imports of about 3,000 articles from 140 developing countries.

Designation of beneficiary developing countries

The following developed countries are prohibited under section 502(b) as amended by the 1984 Act from designation as BDCs:

Australia
Austria
Canada
Czechoslovakia
European Economic Community member states
Finland
Germany (East)
Iceland
Japan
Monaco
New Zealand
Norway
Poland
Republic of South Africa
Sweden
Switzerland
Union of Soviet Socialist Republics

The President is also prohibited from designating any country for GSP benefits which:

(1) Is a communist country unless (a) its products receive nondiscriminatory (MFN) treatment; (b) it is a Contracting Party to the GATT and a member of the International Monetary Fund; and (c) it is not dominated or controlled by international communism.

(2) Has nationalized or expropriated U.S. property, including patents, trademarks, or copyrights, unless the President determines and reports to Congress there is adequate compensation, negotiations underway to provide compensation, or a dispute over compensation is in arbitration.

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[10] Public Law 94-455, approved October 4, 1976, 19 U.S.C. 2462.
[11] Public Law 96-39, approved July 26, 1979, 19 U.S.C. 2462-2464.
[12] Public Law 98-573, title V, approved October 30, 1984.

(3) Fails to recognize as binding or enforce arbitral awards in U.S. favor.

(4) Affords "reverse preferences" to other developed countries likely to have a significant adverse impact on U.S. commerce.

(5) Is a member of OPEC or other arrangement and withholds supplies of vital commodity resources or raises their price to unreasonable levels, causing serious disruption of the world economy. Under a 1979 amendment, countries which entered bilateral product-specific agreements with the United States prior to January 3, 1980 (i.e., Venezuela, Ecuador, and Indonesia) are exempt from this condition unless they subsequently interrupt or terminate oil supplies to the United States.

(6) Aids or abets international terrorism.

(7) Has not taken or is not taking steps to afford internationally recognized workers rights to its workers.[13]

The President may waive conditions (2), (3), (6), and (7), if he determines and reports with reasons to the Congress that designation of the particular country is in the national economic interest.

In addition, the President must take certain other factors into account under section 502(c) as amended by the 1984 Act in designating BDCs: an expressed desire of the country to be designated; the country's level of economic development; whether other major developed countries extend GSP to the country; the extent the country has assured the United States it will provide "equitable and reasonable access" to its markets and basic commodity resources and refrain from engaging in unreasonable export practices; the extent the country is providing adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property; the extent the country has taken action to reduce distorting investment practices and policies and reduce or eliminate barriers to trade in services; and whether the country has taken or is taking steps to afford its workers internationally recognized worker rights.

Before designating any beneficiary country, the President must notify the Congress of his intention and the considerations entering his decision. Before terminating designation of any beneficiary, the President must provide the Congress and the country concerned at least 60 days advance notice of his intention, together with the reasons. The President must withdraw or suspend the designation if he determines the country no longer meets the conditions for designation.

The countries currently designated as BDCs of GSP are listed under general headnote (e)(v) of the Tariff Schedules of the United States.

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[13] Defined by amendment under section 503 of the 1984 Act for purposes of GSP to include:
"(A) the right to association;
"(B) the right to organize and bargain collectively;
"(C) a prohibition on the use of any form of forced or compulsory labor;
"(D) a minimum age for the employment of children; and
"(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health".

Eligible articles

The President designates articles under section 503 eligible for GSP duty-free treatment after considering advice required through public hearings, from the International Trade Commission (ITC) on the probable domestic economic impact, and from Executive branch agencies.

GSP duty-free treatment is prohibited by statute on textile and apparel articles subject to textile agreements; watches; import-sensitive electronic articles; import-sensitive steel articles; footwear, handbags, luggage, flat goods, (e.g., wallets, change purses, eyeglass cases), work gloves, and leather wearing apparel which were ineligible for GSP as of April 1, 1984; and import-sensitive semi-manufactured and manufactured glass products. Articles are ineligible for GSP during any period they are subject to import relief under sections 201–203 of the Trade Act of 1974 or to national security actions under section 232 of the Trade Expansion Act of 1962.

The President must also exclude any other articles he determines to be import sensitive in the context of GSP. In order to administer this requirement, the USTR has established by regulation an interagency procedure for annual review of petitions from any interested party to have new articles added to, or removed from, the GSP list. The committee also considers modifications on its own motion.

GSP duty-free treatment applies only to an eligible article which meets the following rule-of-origin requirements:

(1) The article must be imported directly from a BDC into the U.S. customs territory; and

(2) The sum of (a) the cost or value of materials produced in a beneficiary country, plus (b) the direct cost of processing performed in such country is not less than 35 percent of the appraised value of the article when it enters into the U.S. customs territory.

Materials and processing costs in two or more countries which are members of the same association of countries which is a customs union or free trade area may be treated as one BDC and cumulated to meet the 35 percent minimum local content. Materials imported into a BDC may be counted toward the 35 percent minimum valued-added requirement only if they are substantially transformed into new and different articles in the BDC.

Limitations on preferential treatment

The President has general authority under section 504(a) to withdraw, suspend, or limit application of GSP and restore MFN duties with respect to any article or any country after considering the factors in section 501 and 502(c), but he cannot establish any intermediate rates of duty. Since 1981, this authority has been used in the context of the annual interagency review process for "discretionary graduation" from GSP of particular products from particular countries which have demonstrated their competitiveness and to promote a shifting of benefits to less advanced developing countries.

In addition to the annual review of petitions on article eligibility and discretionary graduation of particular products from particular countries, section 504 as amended by the 1984 Act applies statutory "competitive need" limitations of GSP duty-free treatment, subject to waiver under certain conditions. The basic purposes of the competitive need limitations are to (1) establish a benchmark for determining when products from particular countries are competitive in the U.S. market and therefore no longer need preferential tariff treatment; and (2) to reallocate GSP benefits to less competitive producers. The limits have also provided some measure of protection to domestic producers of like or directly competitive products.

Under the competitive need limits, if imports of a particular article from a particular BDC exceed either (1) a value level adjusted annually in relation to changes in the U.S. gross national product (GNP) (increased from $25 million in 1974 to about $57 million in 1983) or (2) 50 percent of total U.S. imports of the article in a particular calendar year, GSP treatment on that article from that country must be removed and the normal rate of duty imposed on all imports of the article from that country by July 1 of the following year. GSP treatment may be reinstated in a subsequent calendar year if imports of the product from the excluded country have fallen below the competitive need ceilings then in effect during the preceding calendar year.

There are four statutory circumstances in which competitive need limits may not apply:

(1) If the President determines that an article like or directly competitive with a particular GSP article was not produced in the United States on January 3, 1985, then that GSP product is exempt from the 50-percent, but not the dollar value, competitive need limit.

(2) The President may waive the 50-percent, but not the dollar, competitive need limit on articles for which total U.S. imports are de minimis, i.e., not more than $5 million during the preceding calendar year indexed annually to changes in the U.S. GNP since 1979.

(3) Neither of the competitive need limits applies after at least 60 days advance notice to the Congress to any BDC the President determines to be a least developed developing country.

(4) The President may waive the competitive need limits for a particular country based on a determination that (a) there has been an historical preferential trade relationship between the United States and such country; (b) there is a treaty or trade agreement in force covering economic relations between such country and the United States; and (c) such country does not discriminate against or impose unjustifiable or unreasonable barriers to U.S. commerce. This waiver authority which was designed for possible exemption of the Philippines, has never been utilized.

As amended by the 1984 Act, section 504 requires the President to conduct a general review of eligible articles by January 4, 1987, and periodically threafter, and report to the Congress by January 4, 1988, on the actions he has taken to withdraw, suspend, or limit GSP benefits for failure to take actions described in the country designation criteria.

If, after any general product review, the President determines that a country has demonstrated a sufficient degree of competitiveness in a particular article relative to other BDCs, then he must reduce the competitive need limits on that article from that country to $25 million, adjusted annually to changes in the U.S. GNP since 1974, and 25 percent of total U.S. imports of the article.

The President may waive competitive need limits on any article as of January 4, 1987, if he (1) receives ITC advice on whether any U.S. industry is likely to be adversely affected; (2) determines a waiver is in the national economic interest based upon the country designation factors under section 501 and 502(c) as amended; and (3) publishes his determination. In making the national interest determination the President must give great weight to (1) assurances of equitable and reasonable market access in the BDC; and (2) the extent the country provides adequate and effective intellectual property rights protection. Total waivers for all countries above existing competitive need limits cannot exceed 30 percent of total GSP duty-free imports in any year, of which not more than one-half (i.e., 15 percent of total GSP duty-free imports) may apply to waivers on articles from countries which account for at least a 10 percent share of total GSP duty-free imports or have a per capita GNP of $5,000 or more in that year.

Any BDC which reaches a per capita GNP level of $8,500 in a particular calendar year, indexed annually by 50 percent of the annual change in U.S. GNP since 1984, must be graduated from GSP on all eligible articles over a 2-year phaseout period.

Other provisions

Section 505 as amended by the 1984 Act requires the President to submit a report to the Congress on the operation of the GSP program by January 4, 1990, as well as an annual report on the status of internationally recognized worker rights within each BDC.

Section 506 as added by the 1984 Act requires appropriate U.S. agencies to assist BDCs to develop and implement measures designed to assure that the agricultural sectors of their economies are not directed to export markets to the detriment of foodstuff production for their own citizens.

Least Developed Developing Countries [LDDC's]

Preferential rates of duty are applicable to designated products of the least developed developing countries enumerated in general headnote 3(e)(vi) of the TSUS which are not eligible for duty-free treatment under another preferential scheme. At present, the LDDC designation applies to the following 26 countries:

Bangladesh
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Cape Verde
Central African Republic
Chad
Comoros
Gambia
Guinea
Haiti
Lesotho
Malawi
Maldives
Mali
Nepal
Niger
Rwanda
Somalia
Sudan
Tanzania
Uganda
Western Samoa
Yemen Arab Republic (Sanáa)

The authority to provide such preferential tariff treatment in accordance with agreements reached with such less developed countries in the Tokyo Round of Multilateral Trade Negotiations (MTN) is contained in section 503(a)(2) of the Trade Agreements Act of 1979. This statute is one of several that modified the mandatory staging of duty-rate reductions negotiated under the authority of the Trade Act of 1974, provided for by section 109(a) of that Act. Most duty-rate reductions granted by the United States in the Tokyo Round were required to be introduced in eight equal annual stages beginning on January 1, 1980, and ending on January 1, 1987. Staging for a small number of items was extended to 1988 and 1989. Section 503(a)(2) exempted from the staging requirement articles which the President determined not to be import sensitive and which were the product of a country included in the U.N. General Assembly's list of "least developed countries" which is also a beneficiary developing country under the U.S. Generalized System of Preferences. The President was also authorized to suspend at any time the LDDC preference, and thereby increase the duty rates in question to the level of their current MFN stage.

In proclamation 4707 of December 11, 1979, which put into effect (as of January 1, 1980) the concessions granted by the United States in the Tokyo Round of GATT negotiations, the President designated 27 countries as LDDC's and provided for the nonstaged application of duty-rate concessions to imports from them. The President determined that virtually all items on which duty-rate reductions had been granted were not import sensitive; hence, the LDDC preference was applied to only slightly fewer items than those on which concessions had been granted. For the overwhelming majority of items, the full reduction agreed to in the Tokyo Round was applied to LDDC's immediately as of January 1, 1980; for a limited number of items, the full reduction was delayed until January 1 of 1981, 1982, or even 1983. Excepted from the LDDC preference, however, were articles subject to any of the temporary modifications of duty rate contained in the Appendix to the Tariff Schedules (to which articles those modified rates apply).

Currently, under general headnote 3(e)(vi)(B), preferential rates under this program are applicable to those products of eligible countries for which such a rate appears in the "Special" column followed by the symbol "D" in parentheses. However, since the full staging of tariff reductions under the Tokyo Round will have been implemented as of January 1, 1987, for most articles, very few items are now subject to preferential LDDC rates.

Caribbean Basin Initiative (CBI)

CARIBBEAN BASIN ECONOMIC RECOVERY ACT

The Caribbean Basin Economic Recovery Act,[14] commonly referred to as the Caribbean Basin Initiative or CBI, was enacted on August 5, 1983, authorizing certain U.S. unilateral and preferential trade and tax measures for Caribbean Basin countries and territories.

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[14] Public Law 98-67, title II, approved August 5, 1983, 19 U.S.C. 2701 et. seq.

The United States developed this program for responding to the economic crisis in the Caribbean in close consultation with governments and private sectors of potential recipients and with other donor countries in the region. On February 24, 1982, President Reagan outlined the CBI before the Organization of American States and on March 17, 1982, he first submitted this plan to the Congress. H.R. 2397 containing amended versions of the trade and tax proposals, was passed by the House of Representatives in the 97th Congress on December 17, 1982, but was not acted on by the Senate. The President resubmitted the House-passed version of the plan on February 23, 1983; the Initiative as further amended became title II of the conference report on H.R. 2973, to repeal the withholding of tax from interest and dividends, agreed to by both Houses on July 28, 1983. Separate foreign assistance legislation increased aid to the region as the third element of the program.

The centerpiece of the CBI is authority granted to the President under the Act for 12 years, until September 30, 1995, to provide unilateral duty-free treatment on U.S. imports of eligible articles from designated Caribbean Basin countries and territories. Duty-free treatment became effective as of January 1, 1984, for imports from 20 designated beneficiary countries.[15]

Beneficiary countries or territories

Section 212 of the Act lists the following 27 countries and territories as potentially eligible for designation by the President as CBI beneficiary countries:

Anguilla
Antigua and Barbuda
Bahamas, The
Barbados
Belize
Cayman Islands
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
Panama
Saint Christopher-Nevis
Saint Lucia
Saint Vincent and the Grenadines
Suriname
Trinidad and Tobago
Turks and Caicos Island
Virgin Islands, British

A country or territory cannot be designated as a beneficiary of CBI trade or tax benefits if it:

(1) Is a Communist country;

(2) Has nationalized or expropriated U.S. property including any patent, trademark, or other intellectual property without compensation or submission to arbitration;

(3) Fails to recognize awards arbitrated in favor of U.S. citizens;

(4) Affords preferential tariff treatment to products of other developed countries that has or is likely to have a significant adverse effect on U.S. commerce;

(5) Broadcasts U.S. copyrighted material without the owners' consent; and

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[15] Anguilla, Caymen Islands, Guyana, Nicaragua, Suriname, and the Turks and Caicos Island are not currently designated in Presidential Proclamation 5133 as amended December 29, 1983.

(6) Has not signed an extradition agreement with the United States.

The President may waive conditions (1), (2), (3), and (5) if he determines that designation of the particular country would be in the national economic or security interest of the United States and so reports to the Congress.

In addition, the President must take into account certain other factors under section 212(c) in determining whether to designate a country a CBI beneficiary: the country's desire to be designated; economic conditions and living standards in the country; the extent the country will afford reasonable access to U.S. products and observes international trading rules; the degree the country uses export subsidies or imposes export performance or local content requirements; the degree the country's trade policies contribute to region revitalization and the country is undertaking self-help measures; the degree its workers enjoy reasonable workplace conditions and collective bargaining rights; the extent the country prohibits its nationals from broadcasting copyrighted materials without permission; the extent the country provides adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property; and the extent to which the country is prepared to cooperate in the administration of the CBI.

The President must notify the Congress of his intention to designate countries, together with the considerations entering the decision. He must provide at least 60 days advance notice to the Congress and to the country concerned of his intention to terminate a designation together with the considerations.

Eligible articles

CBI duty-free treatment under section 213(a) of the Act applies only to an article which meets three "rule of origin" requirements:

(1) The article must be imported directly from a beneficiary country into the U.S. customs territory;

(2) The article must contain a minimum 35 percent local content of one or more beneficiary countries (up to 15 percent of the total value of the articles from U.S.-made materials may count toward the 35 percent requirement); and

(3) The article must be wholly the growth, product, or manufacture of a beneficiary country, or, if it contains foreign materials, be substantially transformed into a new or different article in a beneficiary country.

Other provisions and regulations preclude minor pass through operations or transshipments from qualification.

Section 213(b) exempts the following articles from duty-free treatment: textiles and apparel, footwear, handbags, luggage, flat goods (such as wallets, change purses and key and eyeglass cases) work gloves, leather wearing apparel, canned tuna, petroleum and petroleum products, and watches and watch parts contain-components from Communist countries.

Whenever a Presidential proclamation pursuant to section 22 of the Agricultural Adjustment Act to protect a U.S. sugar price support program is in effect, duty-free treatment on sugar imports from all CBI beneficiary countries except the Dominican Republic, Guatemala, and Panama is subject to the "competitive need limitations" in effect under the Generalized System of Preferences program or, if the country so requests, to absolute quotas set by the President. Sugar imports from the three countries are subject to duty-free absolute quotas. The President may adjust or suspend any of the limits or duty-free treatment depending on U.S. market conditions or to protect the price support program. More restrictive quota programs proclaimed under other provisions of law take precedence over the limits of the Act.

Section 213(c) requires the President to suspend duty-free treatment on imports of sugar and beef products from any beneficiary country that does not submit a satisfactory stable food production plan within 90 days after its designation, or while the country is not making a good faith effort to implement the plan or the plan is not achieving its purpose. The President must withhold suspension if the country agrees to consultations within a reasonable period of time and undertakes to formulate and implement remedial action.

The import relief procedures and authorities under section 201-203 of the Trade Act of 1974 and national security measures under section 232 of the Trade Expansion Act of 1962 apply to imports from CBI beneficiary countries. Section 213(e) authorizes the President to suspend CBI duty-free treatment and proclaim a rate of duty or other relief measures as on imports of the article from other countries. Alternatively, the President may maintain duty-free treatment or establish a margin of preference on imports from CBI countries. In its report to the President on import relief investigations covering CBI eligible articles, the International Trade Commission (ITC) must state whether its findings with respect to serious injury to the domestic industry and its recommended remedy apply to imports from CBI beneficiary countries.

Under a special procedure under section 213(b) petitioners for import relief on agricultural perishable products may also file a request with the Secretary of Agriculture for emergency relief. Within 14 days the Secretary must determine whether there is reason to believe a CBI perishable product is being imported in such increased quantities as to be a substantial cause of serious injury to the domestic industry, and recommend to the President emergency relief if warranted. The President must determine within 7 days after receiving the Secretary's recommendation whether to take emergency action restoring the normal rate of duty pending final action on the import relief petition.

Section 215 requires the ITC to report annually to the Congress on the actual economic impact and assess the probable future effects of the Act on the U.S. economy generally and on specific domestic industries. Section 216 also requires an annual report to the Congress by the Secretary of Labor on the impact of the CBI on U.S. labor. Section 217 requires a feasibility study by the Secretary of State of establishing a Caribbean Trade Institute in Harlem, New York City.

Measures for Puerto Rico and U.S. insular possessions

The Act contains a number of provisions to maintain and improve the competitive position of Puerto Rico and the U.S. insular possessions (including the Virgin Islands, American Samoa, Guam):

(1) Imports from Puerto Rico and the Virgin Islands may be counted toward the 35 percent minimum local content rule of origin requirement for CBI duty-free treatment. Section 235 of the Tariff and Trade Act of 1984 amended section 213(a) also to permit articles from CBI beneficiary countries to enter under bond for processing or manufacture in Puerto Rico without payment of duty upon withdrawal if they meet CBI rule of origin requirements.

(2) The permissible foreign content is increased from 50 to 70 percent for duty-free treatment of imports of CBI eligible articles from U.S. insular possessions under general headnote 3(a) of the Tariff Schedules of the United States.

(3) Duty-free entry of alcoholic beverages by returning U.S. residents arriving directly from insular possessions is increased from 4 to 5 liters provided at least one liter is the product of an insular possession.

(4) Section 221 amends section 7652 of the Internal Revenue Code to require that all excise taxes collected on foreign rum imported into the United States, whether or not from Caribbean countries, be paid to the treasuries of Puerto Rico and the Virgin Islands. Section 214(c) requires the President to consider compensatory measures for the governments of Puerto Rico and the Virgin Islands if there is a reduction in the amount of rum excise tax rebates.

(5) The term "industry" under the import relief provisions of section 201 of the Trade Act of 1974 is clarified to enable producers in the insular possessions to petition for import relief.

(6) Nontoxic rum stillage discharges in the Virgin Islands are exempt from certain provisions of the Federal Water Pollution Control Act if the discharges are 1,500 feet from the shore and are determined by the Governor of the Virgin Islands not to constitute a health or environmental hazard.

Tax measures

Section 222 of the Act amends section 274(h) of the Internal Revenue Code to allow deductions for business expenses incurred while attending conventions and meetings in a designated Caribbean Basin beneficiary country (or Bermuda) if it enters into an executive agreement with the United States to provide, on a reciprocal basis, for information relating to U.S. tax matters to be made available to U.S. tax officials, including agreement to exchange bearer share and bank account information for criminal tax purposes. No deduction is available for attending a convention in a country found by the Secretary of the Treasury to discriminate in its tax laws against conventions held in the United States. The provision applies to conventions beginning after June 30, 1983, if an exchange of information agreement is in effect.

The Secretary of the Treasury was required to report within 90 days after enactment of the Act on the level at which Caribbean Basin tax havens are being used to evade or avoid Federal taxes and the effect on Federal revenues of such use, any information on the relationship of such use to drug trafficking and other criminal activities, and on current anti-tax haven enforcement activities of the Department of the Treasury.

Customs Valuation

Historical background

In order to assess applicable duty rates under the Tariff Schedules of the United States (TSUS) and to collect appropriate import statistics, the dutiable value of all imported merchandise must be determined. The process by which Customs determines the dutiable value of imported merchandise is referred to as "appraisement" or "valuation."

Merchandise exported to the United States on or after July 1, 1980, is subject to appraisement under a new, uniform system of valuation established by title II of the Trade Agreements Act of 1979. Title II, which implements the Customs Valuation Agreement (entitled the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade) negotiated as one of the Tokyo Round MTN trade agreements, was put into effect by Presidential Proclamation 4768 of June 28, 1980.[16]

Title II revised section 402 of the Tariff Act of 1930 [17] and repealed the American Selling Price (ASP) method of valuation. However, under section 204(c) of the Trade Agreements Act of 1979, the ASP method of valuation would continue to apply to certain rubber footwear exported to the United States before July 1, 1981. Title II also repealed the alternative valuation system under section 402a of the Tariff Act of 1930.[18]

Prior to the Trade Agreements Act, the U.S. valuation system was complicated by the fact that two separate valuation standards existed side-by-side—commonly referred to as the "old law" and the "new law." Section 402a of the Tariff Act of 1930 was called the "old law" because it was enacted as part of the original Tariff Act of 1930. It provided for the following order of progression in appraising merchandise: (1) foreign value or export value, whichever is higher; (2) United States value; (3) cost of production.

It also provided for the application of the American Selling Price (ASP) basis of appraisement for certain designated articles such as benzenoid chemicals and certain footwear. The ASP method was based on the value of a domestically produced product rather than the imported product in order to provide greater protection to the U.S. industry from foreign competition.

During the early 1950's the Department of the Treasury proposed the elimination of the Foreign Value basis of appraisement, which as its name implies is based on the value of merchandise sold in foreign markets. The Department of the Treasury argued that data to determine Export Value were more readily available and the elimination of Foreign Value would streamline the appraisement process by obviating the need to make simultaneous appraisements under Export Value and Foreign Value.

In response to these proposals, the Customs Simplification Act of 1956 created in effect a new group of valuation standards. These standards were contained in section 402 of the Tariff Act of 1930 [19] and referred to as the "new law." The "new law" eliminated the Foreign Value standard and made Export Value the primary basis of appraisement. With certain modifications, both U.S. Value and Cost of Production (renamed the Constructed Value) were retained as the first and second alternative standards. The meaning of each of the standards was modified, however, by changes in the statutory language and by the inclusion in the law of definitions for certain of the terms.

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[16] 45 Fed. Reg. 45135 (1980).

[17] 19 U.S.C. 1401a.

[18] 19 U.S.C. 1402.

[19] 19 U.S.C. 1401a.

However, the Congress was unwilling to make the changes applicable to all imported articles. Because the new provisions were expected to have a duty-reducing effect for many articles, the Secretary of the Treasury was instructed to prepare a list of commodities which, if appraised under the new valuation standards, would have been appraised at 95 percent or less of the value at which they were actually appraised in the 12 months ending June 30, 1954 (i.e., dutiable value reduced by 5 percent or more). The articles so identified were published in Treasury Decision 54521 (January 20, 1958), which is referred to as "the Final List" and such articles were to continue to be appraised under the "old law" standards which remained in section 402a of the Tariff Act. Thus, after the enactment of the Customs Simplification Act of 1956,[20] there were now nine separate bases of appraisement (five under the old law and four under the new) which could be applicable to imported products.

It was largely this complexity of U.S. valuation laws as well as foreign objections to the American Selling Price basis of appraisement which prompted many of our trading partners to enter into negotiations at the Tokyo Round of the MTN on the development of a new system of customs valuation.

The GATT Valuation Agreement

The Customs Valuation Agreement, which was signed by most major U.S. trading partners at the conclusion of the Tokyo Round of MTN negotiations,[21] consists of four major parts in addition to a preamble and three annexes. Part I sets out the substantive rule of customs valuation, the substance of which was codified in U.S. law by the Trade Agreements Act of 1979 as an amendment to section 402 of the Tariff Act of 1930. Part II provides for the international administration of the agreement and for dispute resolution among signatories. Part III provides for special and differential treatment for developing countries, and Part IV contains so-called final provisions dealing with matters such as acceptance and accession of the agreement, reservations and servicing of the agreement.

Administration and dispute resolution.—As mentioned above, the agreement establishes two committees—a "Committee on Customs Valuation" (referred to as "the Committee") and a "Technical Committee on Customs Valuation" (referred to as the "Technical Committee")—to administer the agreement and creates a mechanism for resolving disputes between parties to the agreement.

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[20] Act of August 2, 1956, ch. 887.

[21] Current signatories to the Valuation Agreement are: Argentina; Australia; Austria; Botswana; Brazil; Canada; Czechoslovakia; European Economic Community (EEC); Finland; Hong Kong; Hungary; India; Japan; Korea, Republic of; Lesotho; Malawi; Turkey; New Zealand; Norway; Romania; South Africa; Sweden; Switzerland; United States; and Yugoslavia.

The Committee, which is to be composed of representatives from each of the parties, meets annually in Geneva "to consult on matters relating to the administration of the customs valuation system by any party to Agreement as it might affect the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the parties." The GATT secretariat acts as the secretariat to the Committee and the Office of the U.S. Trade Representative is the U.S. representative to this Committee.

The Technical Committee was created under the auspices of the Customs Cooperation Council (CCC) to carry out the responsibilities assigned to it by the parties and set forth in Annex II to the agreement with a view towards achieving uniformity in interpretation and application of the agreement at the technical level. Among the responsibilities assigned to the Technical Committee are—

(i) to examine specific technical problems arising in the administration of the customs valuation systems and to give advisory opinions offering solutions to such problems;

(ii) to study, as requested and prepare reports on valuation laws, procedures and practices as they relate to the agreement; and

(iii) to furnish such information and advice on customs valuation matters as may be requested by parties to the agreement.

The Technical Committee meets periodically in Brussels and the U.S. Customs Service serves as the U.S. representative to this technical committee.

Dispute resolution.—Several steps are provided for a party to follow if it considers that any benefit accruing to it under the agreement is being nullified or impaired or if any objectives of the agreement are being impeded by the actions of another party. First, the aggrieved party should request consultations with the party in question with a view to reaching a mutually satisfactory solution.

If no mutually satisfactory solution is reached between the parties within a reasonably short period of time, the Committee shall meet at the request of either party (within 30 days of receiving such request) and attempt to facilitate a mutually satisfactory solution. If the dispute is of a technical nature, the Technical Committee will be asked to examine the matter and report to the Committee within 3 months.

In the absence of a mutually agreeable solution from the Committee up to this point, the Committee shall, upon the request of either party, establish a panel (within 3 months from the date of the parties' request for the Committee to investigate where the matter is not referred to the Technical Committee, otherwise within 1 month from the date of the Technical Committee's report) to examine the matter and make such finding as will assist the Committee in making recommendations or giving a ruling on the matter.

After the investigation is complete, the Committee shall take appropriate action (in the form of recommendations or rulings). If the Committee considers the circumstances to be serious enough, it may authorize one or more parties to suspend the application to any other party of obligations under the valuation agreement.

Special and differential treatment.—Part III of the agreement allows developing countries which are party to the agreement—

(i) to delay application of its provisions for a period of five years from the date the agreement enters into force;

(ii) to delay application of articles 1, 2(b)(iii) and 6 (both of which provide for a determination of the computed value of imported goods) for a period of three years; and

(iii) to receive technical assistance (such as training of personnel, assistance in preparing implementation measures and advice on the application of the agreement's provisions) upon request, from developed countries party to the agreement.

Current law [22]

Section 402 of the Tariff Act of 1930 [23] as amended by the Trade Agreements Act of 1979 establishes "Transaction Value" as the primary basis for determining the value of imported merchandise. Generally, Transaction Value is the price actually paid or payable for the goods, with additions for certain items not included in that price.

If the first valuation basis cannot be used, the secondary bases are considered. These secondary bases, listed in the order of precedence for use, are: Transaction Value of Identical or Similar Merchandise; Deductive Value; Computed Value.

The order of precedence of the last two bases can be reversed if the importer so requests. Each of these bases is discussed in detail below:

Transaction Value of Imported Merchandise.—Several concepts relating to the transaction value of imported merchandise are also applicable to the transaction value of identical merchandise, and of similar merchandise which are discussed in the next section. These concepts, concerning the nature of transaction value itself, are discussed in terms of the transaction value of imported merchandise. The discussion in the next section of the transaction value of identical merchandise and similar merchandise will focus on the unique features applicable to those standards.

DEFINITIONS

The transaction value of imported merchandise (i.e., the merchandise undergoing appraisement) is defined as the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to:

A. The packing costs incurred by the buyer;

B. Any selling commission incurred by the buyers;

C. The value of any assist; [24]

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[22] Most of the description of current law was taken from "Customs Valuation Under the Trade Agreements Act of 1979," Department of the Treasury, U.S. Customs Service, Office of Commercial Operations, October 1981.

[23] 19 U.S.C. 1401a.

[24] An "assist" is any of the following items that the buyer of imported merchandise provides directly or indirectly, and free of charge or at reduced cost, for use in the production of or the sale for export to the United States of the imported merchandise:

Materials, components, parts, and similar items incorporated in the imported merchandise.
Tools, dies, molds, and similar items used in producing the imported merchandise.
Merchandise consumed in producing the imported merchandise.

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D. Any royalty or license fee that the buyer is required to pay as a condition of the sale;

E. The proceeds, accruing to the seller, of any subsequent resale, disposal, or use of the imported merchandise.

These amounts (A through E) are added only to the extent that each (1) is not included in the price, and (2) is based on information establishing the accuracy of the amount. If sufficient information is not available, then the transaction value cannot be determined; and the next basis of value, in order of precedence, must be considered for appraisement.

The price actually paid (or payable) for the imported merchandise is the total payment, excluding international freight, insurance, and other C.I.F. charges, that the buyer makes to the seller.

Amounts to be disregarded in determining transaction value are:

A. The cost, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the goods from the country of exportation to the place of importation in the United States.

B. Any decrease in the price actually paid or payable that is made or effected between the buyer and seller after the *date of importation* of the goods into the United States.

As well as, *if identified separately:*

C. Any reasonable cost or charge incurred for: (1) Constructing, erecting, assembling, maintaining, or providing technical assistance with respect to the goods after importation into the United States, or (2) transporting the goods after importation.

D. The customs duties and other Federal taxes, including any Federal excise tax for which sellers in the United States are ordinarily liable.

LIMITATIONS ON THE APPLICABILITY OF TRANSACTION VALUE

The transaction value of imported merchandise is the appraised value of that merchandise, provided certain limitations do not exist. If any of these limitations are present, then transaction value cannot be used as the appraised value, and the next basis of value will be considered.

The limitations can be divided into four groups: restrictions on the disposition or use of the merchandise, conditions for which a value cannot be determined, proceeds accruing to the seller, and related-party transactions where the transactions value is not acceptable. Each is discussed separately below.

1. Restrictions.—With regard to the first category of limitations which preclude the use of transactions value, is the imposition of restrictions by a seller on a buyer's disposition or use of the imported merchandise. However, exceptions are made to this rule. Thus certain restrictions are acceptable, and their presence will still allow the use of transaction value.

Engineering, development, artwork, design work, and plans and sketches that are undertaken outside the United States.

The last item listed above ("Engineering, development . . .") will not be treated as an assist if the service or work is (1) performed by a person domiciled within the United States, (2) performed while that person is acting as an employee or agent of the buyer of the imported merchandise, and (3) incidental to other engineering, development, artwork, design work, or plans or sketches undertaken within the United States.

The acceptable restrictions are: (a) those imposed or required by law, (b) those limiting the geographical area in which the goods may be resold, and (c) those not substantially affecting the value of the goods. An example of the last restriction occurs when a seller stipulates that a buyer of new-model cars cannot sell or exhibit the cars until the start of the new sales year.

2. Conditions.—Secondly, if the sale of, or the price actually paid or payable for, the imported merchandise is subject to any condition or consideration for which a value cannot be determined, then transaction value cannot be used. Some examples of this group include when the price of the imported merchandise depends on (a) the buyer's also buying from the seller other merchandise in specified quantities, (b) the price at which the buyer sells other goods to the seller, or (c) a form of payment extraneous to the imported merchandise, such as, the seller's receiving a specified quantity of the finished product that results after the buyer further processes the imported goods.

3. Proceeds.—Under the third category of impermissable restrictions, if part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer accrues directly or indirectly to the seller, then transaction value cannot be used. There is an exception however.

The exception is that, if an appropriate adjustment can be made for the partial proceeds the seller receives, then transaction value can still be considered. Whether an adjustment would be made would depend on whether the price actually paid or payable includes such proceeds and, if it does not, the availability of sufficient information to determine the amount of such proceeds.

4. Relationship.—Finally, the relationship between the buyer and seller may preclude the application of transaction value. The fact that the buyer and seller are related [25] does not automatically negate using their transaction value; however, the transaction value must be acceptable under prescribed procedures.

To be acceptable for Transaction Value, relationship between the buyer and seller must not have influenced the price actually paid or payable.

Alternatively, the transaction value may be acceptable if the imported merchandise closely approximates any one of the following test values, provided these values relate to merchandise exported to the United States at or about the same time as the imported merchandise:

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[25] For appraisement purposes, any of the following persons are considered related—

Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants;

Any officer or director of an organization and such organization;

An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization;

Partners;

Employer and employee;

Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;

Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(a) The transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States,

(b) The deductive value or computed value for identical merchandise or similar merchandise, or

(c) The transaction value of imported merchandise in sales to unrelated buyers of merchandise, for exportation to the United States, that is identical to the imported merchandise under apprisement, except for having been produced in a different country. No two sales to unrelated buyers can be used for comparison unless the sellers are unrelated.

The test values are used for comparison only. They do not form a substitute basis of valuation.

In determining if the transaction value is close to one of the foregoing test values (a, b, or c), an adjustment is made if the sales involved differ in:

Commercial levels; quantity levels; the costs, commissions, values, fees, and proceeds described in A through E of the "Definition" of value; and the costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

As stated, the test values are alternatives to the relationship criterion. If one of the test values is met, it is not necessary to examine the question of whether the relationship influenced the price.

Transaction value of identical merchandise or similar merchandise.—If the transaction value of imported merchandise cannot be determined, then the customs value of the imported goods being appraised is the transaction value of identical merchandise. If merchandise identical to the imported goods cannot be found or an acceptable transaction value for such merchandise does not exist, then the customs value is the transaction value of similar merchandise.

The same additions, exclusions, and limitations, previously discussed in determining the transaction of imported merchandise, also apply in determining the transaction value of identical or similar merchandise. Therefore that discussion will not be repeated in this section.

Besides the data common to all three transaction values, certain factors specifically apply to the transaction value of identical merchandise or similar merchandise. These factors concern (a) the exportation date, (b) the level and quantity of sales, (c) the meaning, and (d) the order of precedence of identical merchandise and of similar merchandise.

a. Exportation Date.—The identical merchandise, or similar merchandise, for which a transaction value is being determined must have been sold for export to the United States and exported at or about the same time as the merchandise being appraised.

b. Sales Level/Quantity.—The transaction value of identical merchandise (or similar merchandise) must be based on sales of identical merchandise (or similar merchandise) at the same commercial level and, in substantially the same quantity, as the sales of the merchandise being appraised. If no such sale exists, then sales at either a different commercial level or in different quantities, or both, can be used, but must be adjusted to take account of any such difference. Any adjustment must be based on sufficient information, that is, information establishing the reasonableness and accuracy of the adjustment.

c. Definition.—(1) The term *"identical merchandise"* means merchandise that is:

Identical in all respects to the merchandise being appraised;

Produced in the same country as the merchandise being appraised; and

Produced by the same person as the merchandise being appraised.

If merchandise meeting all three criteria cannot be found, then identical merchandise is merchandise satisfying the first two criteria but produced by a different person than the merchandise being appraised. Merchandise can be identical to the merchandise being appraised and still show minor differences in appearance. However, identical merchandise does not include merchandise that incorporates or reflects engineering, development, artwork, design work, and plans and sketches provided free or at reduced cost by the buyer and undertaken in the United States.

(2) The term *"similar merchandise"* means merchandise that is—

Produced in the same country and by the same person as the merchandise being appraised,

Like the merchandise being appraised in characteristics and component materials, and

Commercially interchangeable with the merchandise being appraised.

If merchandise meeting the foregoing criteria cannot be found, then similar merchandise is merchandise having the same country of production, like characteristics and component materials, and commercial interchangeability but produced by a different person.

In determining whether goods are similar, some of the factors to be considered are the quality of the goods, their reputation, and the existence of a trademark. It is noted, however, that similar merchandise does not include merchandise that incorporates or reflects engineering, development, artwork, design work, and plans and sketches provided free or at reduced cost by the buyer and undertaken in the United States.

d. Order of Precedence.—Sometimes more than one transaction value will be present, that is, for identical merchandise produced by the same person, for identical merchandise produced by another person, for similar merchandise produced by the same person, and for similar merchandise produced by another person. If this occurs, one value must take precedence.

As stated previously, accepted sales at the same level and quantity take-precedence over sales at different levels and/or quantities. The order of precedence can be summarized as:

(1) Identical merchandise produced by the same person;
(2) Identical merchandise produced by another person;
(3) Similar merchandise produced by the same person; and
(4) Similar merchandise produced by another person.

It is possible that two or more transaction values for identical merchandise (or similar merchandise) will be determined. In such a case, the lowest value will be used as the appraised value of the imported merchandise.

Deductive value.—If the transaction value of imported merchandise, of identical merchandise, or of similar merchandise cannot be determined, then deductive value is calculated for the merchandise being appraised. Deductive value is the next basis of appraisement to be used, unless the importer designated, at entry summary, computed value as the preferred method of appraisement. If computed value was chosen and subsequently determined not to exist for customs valuation purposes, then the basis of appraisement reverts back to deductive value.

If an assist is involved in a sale, that sale cannot be used in determining deductive value. So any sale to a person who supplies an assist for use in connection with the production or sale for export of the merchandise concerned is disregarded for deductive value.

Basically deductive value is the resale price in the United States after importation of the goods, with deductions for certain items. Generally, the deductive value is calculated by starting with a unit price and making certain additions to and deductions from that price.

One of three prices constitutes the unit price in deductive value. The price used depends on when and in what condition the merchandise concerned is sold in the United States. If the merchandise is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price used is the unit price at which the greatest aggregate quantity of the merchandise concerned is sold at or about such date.

If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price used is the unit price at which the greatest aggregate quantity of the merchandise concerned is sold after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

Finally, if the merchandise concerned is not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised. Price: The price used is the unit price at which the greatest aggregate quantity of the merchandise being appraised, after further processing, is sold before the 180th day after the date of such importation.

After determining the appropriate price, packing costs for the merchandise concerned must be added to the price used for deductive value, provided such costs have not otherwise been included. These costs are added, regardless of whether the importer or the buyer incurs the cost. Packing costs include the cost (a) of all containers and coverings of whatever nature and (2) of packing, whether for labor or materials, used in placing the merchandise in condition, packed ready for shipment to the United States.

Certain other items are not a part of deductive value and must be deducted from the unit price. The items are:

(1) *Commissions or Profit and General Expenses.*—Any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, applicable to sales in the United States of imported merchandise that is (a) of the

same class or kind as the merchandise concerned; and (b) regardless of the country of exportation.

(2) *Transportation/Insurance Costs.*—The usual and associated costs of transporting and insuring the merchandise concerned (a) from the country of exportation to the place of importation in the United States; and (b) from the place of importation to the place of delivery in the United States, provided these costs are not included as a general expense under the preceding paragraph.

(3) *Customs Duties/Federal Taxes.*—The customs duties and other Federal taxes payable on the merchandise concerned because of its importation, plus any Federal excise tax on, or measured by the value of, such merchandise for which sellers in the United States are ordinarily liable; and

(4) *Value of Further Processing.*—The value added by the processing of the merchandise after importation, provided sufficient information exists concerning the cost of processing. The price determined for deductive value is reduced by the value of further processing, only if the third unit price is used as deductive value (i.e., the merchandise concerned is not sold in the condition as imported and not sold before the close of the 90th day after the date of importation, but is sold before the 180th day after the date of importation).

Computed value.—The last basis of appraisement is computed value. If customs valuation cannot be based on any of the values previously discussed, then computed value is considered. This value is also the one the importer can select at entry summary to precede deductive value as a basis of appraisement.

Computed value consists of the sum of the following items:

(a) Materials, fabrication, and other processing used in producing the imported merchandise;

(b) Profit and general expenses;

(c) Any assist, if not included in (a) and (b); and

(d) Packing costs.

The cost or value of the materials, fabrication, and other processing of any kind used in producing the imported merchandise is based (1) on information provided by or on behalf of the producer and (2) on the commercial accounts of the producer, if the accounts are consistent with generally accepted accounting principles applied in the country of production of the goods.

The producer's profit and general expenses are used, provided they are consistent with the usual profit and general expenses reflected by producers in the country of exportation in sales of merchandise of the same class or kind as the imported merchandise.

If the value of an assist used in producing the merchandise is not included as part of the producer's materials, fabrication, other processing or general expenses, then the prorated value of the assist will be included in computed value. The value of any engineering, development, artwork, design work, and plans and sketches undertaken in the United States is included in computed value only to the extent that such value has been charged to the producer.

Finally, the cost of all containers and coverings of whatever nature and of packing, whether for labor or material, used in placing merchandise in condition, packed ready for shipment to the United States is included in computed value.

As can be seen, computed value relies to a certain extent on information that has to be obtained outside the United States, that is, from the producer of the merchandise. If a foreign producer refuses to or is legally constrained from providing the computed value information, or if the importer cannot provide such information within a reasonable period of time, then computed value cannot be determined.

Other.—If none of the previous five values can be used to appraise the imported merchandise, then the customs value must be based on a value derived from one of the five previous methods, reasonably adjusted as necessary. The value so determined should be based, to the greatest extent possible, on previously determined values. Only data available in the United States will be used.

Some examples of how the other methods can be reasonably adjusted are:

Identical Merchandise (or Similar Merchandise):

(a) The requirement that the identical merchandise (or similar merchandise) should be exported at or about the same time as the merchandise being appraised could be flexibily interpreted.

(b) Identical imported merchandise (or similar imported merchandise) produced in a country other than the country of exportation of the merchandise being appraised could be the basis for customs valuation.

(c) Customs values of identical imported merchandise (or similar imported merchandise) already determined on the basis of deductive value and computed value could be used.

Deductive method.—The 90-day requirement could be administered flexibly.

Customs Users Fees

Prior to the Ninety-Ninth Congress, the U.S. Customs Service did not have the general legal authority to collect fees for the processing of persons, aircraft, vehicles, vessels, and merchandise arriving in or departing from the United States. They did, however, have authority to charge fees under certain limited circumstances, such as when they provided services (such as preclearance of passengers and private aircraft) which were of special benefit to a particular individual. They also had the authority to assess fees on operators of bonded warehouses and foreign trade zones and on the entry of vessels into ports and were authorized to receive reimbursement from carriers for overtime for services provided during nonbusiness hours and reimbursement from local authorities for services provided to certain small airports.

The Consolidated Omnibus Budget Reconciliation Act of 1985 [26] in section 13031, established a schedule of fees for Custom's costs of processing the arrival of commercial vessels, trucks and railroad cars, private aircraft and boats, passengers arriving on commercial vessels or aircraft from countries other than Mexico, Canada, U.S.

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[26] P.L. 99-272

insular possessions and other adjacent islands and for the processing of dutiable mail entries prepared by a customs officer and the issuance of customs brokers permits. The Act did not, however, provide for user fees on the general processing of commercial entries. Such fees became effective 90 days after enactment of the legislation.

A number of technical modifications were made to these fees in the Tax Reform Act of 1986.[27] Among the changes included in the Tax Act was the placement of an annual cap on the arrival of commercial vessels, the establishment of a lower vessel fee for certain barges and bulk carriers, and an increase in the fee for rail cars carrying passengers or freight from $5 to $7.50, coupled with the elimination of the fee on empty railroad cars.

The customs users fee schedule was further expanded to cover the costs of processing commercial entries with the enactment of legislation 'Providing for Reconciliation Pursuant to Section 2 of the Concurrent Resolution on the Budget for Fiscal Year 1987".[28] Under this Act, which further amended section 13031 of the Consolidated Budget Reconciliation Act of 1985, beginning on December 1, 1986, an ad valorem user fee is applied to all formal entries of merchandise imported for consumption, including warehouse withdrawals for consumption. These fees are in addition to the processing fees set forth in section 13031(a) of Public Law 99-272. The provision specifically excludes applicability of such user fees to articles classifiable in Schedule 8 of the Tariff Schedules or to products of the least developed developing countries (LDDC's), products of eligible countries under the Caribbean Basin Initiative (CBI), and products of U.S. insular possessions.

From December 1, 1986, through the end of fiscal year 1987, a user fee of 0.22 percent ad valorem is applied, based on the appraised customs value of the imported merchandise. Beginning with fiscal year 1988 and continuing through fiscal year 1989, the fee will be 0.17 percent ad valorem. For fiscal year 1988 to 1989, a special formula is provided which will allow reduction of the fee so that the amount of money collected will continue to closely approximate the amount appropriated for Customs' commercial operations in order to be consistent with the international obligations of the United States. At the end of fiscal year 1989, all customs user fees, including those previously enacted, will cease to exist.

During the effective period of the customs user fees, Customs is precluded from assessing charges for cargo inspection or clearance services or any other customs service performed or personnel provided in connection with the arrival or departure of any commercial vessel, vehicle, or aircraft, its passengers, crew, and cargo, including those performed outside of normal business hours on an overtime basis and those performed outside of the United States except for those fees authorized under subsection (a) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 as amended by this Act.

In the case of small airports and other facilities where the cost of customs services is already borne by the users of such facilities, the

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[27] P.L. 99-514.
[28] P.L. 99-509.

Secretary of the Treasury will be authorized to impose a lower user fee than would be applicable otherwise.

The Customs Service is to collect these fees through usual entry procedures, employing its existing standard consumption entry form (CF 7501). No new recordkeeping or data collection burdens will be imposed on the public.

The proceeds of these fees are to be deposited in a dedicated account within the general fund of the Treasury. Subject to authorization and appropriation, the funds will be available to the Customs Service to cover that agency's cost of commercial services rendered.

Other Customs Laws

Country-of-origin marking

Section 304 of the Tariff Act of 1930, as amended,[29] provides that, with certain exceptions, every imported article of foreign origin (or its container in specified circumstances) "shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article." The purpose of this provision is to permit the "ultimate purchaser" in the United States to choose between domestic and foreign-made products, or between the products of different foreign countries.

When imported articles ordinarily reach their ultimate purchasers in packaged form, the containers or holders must, as a general rule, be marked with the country of origin of their contents, whether or not the articles themselves are required to be marked.

Exceptions.—The statute gives the Secretary of the Treasury the authority to allow exceptions to the marking requirement under prescribed circumstances. For example, certain classes of merchandise are excepted from the country of origin marking requirements because they are not physically susceptible to marking or can only be marked at the cost of injury to the article.

Marking requirements may also be waived as to articles which arrive at the United States border unmarked, if the expense of marking under Customs supervision would be economically prohibitive and the Customs Service is satisfied that the importer or shipper did not fail to mark the merchandise before shipment to the United States for the purpose of invoking this exception and thereby avoiding the marking requirements.

Another exception to the marking requirement may be granted for articles as to which the ultimate purchaser necessarily knows the country of origin. An exception is also provided for articles to be processed by the importer for resale if the processing would necessarily obliterate or conceal any marking. If the processing undertaken by the importer is sufficient to convert the imported article into a new and different article of trade, any subsequent purchaser is not an ultimate purchaser of the imported article.

Other classes of excepted merchandise include products of American fisheries, products of U.S. possessions, products of U.S. origin which have been exported and returned, and articles entered for immediate transshipment and exportation from the United States. In addition, articles qualifying for duty-free treatment as being $1 or less in value, or as bona fide gifts less than $10 in value each, are relieved of the marking requirements, as are articles produced more than 20 years prior to importation.

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[29] 19 U.S.C. 1304.

Finally, under 19 U.S.C. 1304(a)(3)(J), classes of articles named in certain notices published by the Secretary of the Treasury in the late 1930's are not subject to the marking requirements. The articles named in such notices were those which had been imported in substantial quantities during the 5-year period ending December 31, 1936, and which had not been required to bear country of origin markings during that period. Such excepted articles are now found in the so-called "J-List." [30]

A recent amendment to section 304 of the Tariff Act of 1930 contained in section 207 of the Trade and Tariff Act of 1984 provides that no exceptions may be made to the country of origin marking requirement for imported pipe, pipe fittings, compressed gas cylinders, manhole rings or frames, covers and assemblies thereof and specifies the type of marking which is acceptable for those products.

Penalty for failure to mark—Imported goods that are not properly marked are liable for a 10 percent ad valorem duty in addition to any other duty that might be applicable.

However, the payment of the 10 percent marking duty does not discharge the importer's obligation to comply.[31]

Imported articles or their containers that are found to be improperly marked are generally retained in Customs custody until such time as the importer, after notification, arranges for their exportation, destruction, or proper marking under Customs supervision, or until they are deemed abandoned to the Government. If such unmarked articles are part of a shipment the balance of which has previously been released from Customs custody, the importer will be notified and ordered to redeliver the released articles to Customs for marking, exportation, or destruction under Customs supervision.

Drawback

Under 19 U.S.C. 1313(a) "drawback" is payable upon the exportation of an article manufactured or produced in the United States with the use of duty-paid imported merchandise. To receive benefit of drawback, the completed article must have been exported within 5 years from the date of importation of the pertinent duty-paid merchandise. The amount of refund is equal to 99 percent of the duties attributable to the foreign, duty-paid content of the exported article.

The purpose of 19 U.S.C. 1313(a) is to permit American-made products to compete more effectively in world markets. It enables domestic manufacturers and producers to select the most advantageous sources for their raw materials and component requirements without regard to duties, thereby permitting savings in their production costs. It also encourages domestic production and, as a result, the utilization of American labor and capital.

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[30] 19 CFR 134.33.

[31] *Globemaster, Inc.* v. *United States,* 68 Cust. Ct. C.D. 4340, 340 F. Supp. 974 (1972).

The procedural and other requirements governing drawbacks are set forth in 19 CFR Part 22.

An important feature of 19 U.S.C. 1313(a) and a number of other drawback provisions is the allowance of drawback on a substitution basis. Pursuant to 19 U.S.C. 1313(b), an exported article incorporating components entirely of domestic origin can nevertheless qualify for drawback, to the extent that duty has been paid on the importation of components of the same kind and quality as those used in the manufacture or production of the exported article.

Section 202 of the Trade and Tariff Act of 1984 expanded the application of current drawback provisions in three important respects. First, it allows drawback if the same person requesting drawback, subsequent to importation and within 3 years of importation of the merchandise, exports from the United States or destroys under Customs supervision fungible merchandise (whether imported or domestic) which is commercially identical to the merchandise imported.

Second, it allows drawback for all packaging materials imported for packaging or repackaging imported merchandise.

Finally, the act provides that any domestic merchandise acquired in exchange for imported merchandise of the same kind and quality shall be treated as the use of such imported merchandise for drawback purposes if no certificate of delivery is issued for such imported merchandise.

In addition to 19 U.S.C. 1313(a), there are a variety of other specific drawback provisions allowing for the refund of duties and/or internal revenue taxes under specified circumstances for the exportation of products such as flavoring extracts, toiletries, distilled spirits, salts, and cured meats. Further, under 19 U.S.C. 1313(c) drawback is allowable when merchandise is rejected by the importer because it fails to conform to the sample upon which the purchase order was made, or because it fails to conform to the importer's specifications, or because the merchandise was shipped without the consignee's consent. When such rejected merchandise is exported under Customs supervision, 99 percent of the duties paid will be refunded upon compliance with the pertinent regulations.

Copyrights and trademark enforcement

Copyrights.—Section 602(a) of the Copyright Revision Act of 1976[32] provides that the importation into the United States of copies of a work acquired outside the United States without authorization of the copyright owner is an infringement of the copyright and are subject to seizure and forfeiture. Forfeited articles are generally destroyed; however, the articles may be returned to the country of export whenever Customs is satisfied that there was no intentional violation. Copyright owners seeking import protection from the U.S. Customs Service must register their claim to copyright with the U.S. Copyright Office and record their registration with Customs in accordance with applicable regulations.[33]

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[32] Public Law 94-553, sec. 101, approved October 19, 1976, 17 U.S.C. 602(a).

[33] 19 CFR Part 133, Subpart D.

Trademarks and Trade Names.—Articles bearing counterfeit trademarks, or marks which copy or simulate a registered trademark registration of a United States or foreign corporation are prohibited importation, provided a copy of the U.S. trademark registration is filed with the Commissioner of Customs and recorded in the manner provided by regulations.[34] The U.S. Customs Service also affords similar protection against unauthorized shipments bearing trade names which are recorded with Customs pursuant to regulations.[35] It is also unlawful to import articles bearing genuine trademarks owned by a U.S. citizen or corporation without permission of the U.S. trademark owner, if the foreign and domestic trademark owners are not parent and subsidiary companies or otherwise under common ownership and control, provided the trademark has been recorded with Customs and the U.S. trademark owner has not authorized the distribution of trademarked articles abroad.

The Customs Reform and Simplification Act of 1978 [36] strengthened the protection afforded trademark owners against the importation of articles bearing a counterfeit mark. A "counterfeit trademark" is defined as a spurious trademark which is identical with, or substantially indistinguishable from, a registered trademark. Articles bearing a counterfeit trademark which are seized by Customs and forfeited to the government may be (1) given to any Federal, state, or local government agency which has established a need for the article; (2) given to a charitable institution; or (3) sold at public auction if more than 1 year has passed since forfeiture and no eligible organization has established a need for the article. The law also provides an exemption from trademark restrictions for certain articles accompanying a person arriving in the United States when the articles are for personal use and not for sale.

Penalties

Section 592 of the Tariff Act of 1930, as amended,[37] is the basic and most widely used Customs penalty provision. It prescribes monetary penalties against any person who imports, attempts to import, or aids or procures the importation of merchandise by means of false or fraudulent documents, statements, omissions or practices, concerning any material fact. The statute may be applied even though there is no loss of revenue involved.

Section 592 infractions are divided into three categories of culpability, each giving rise to a different maximum penalty, as follows:

(1) *Fraud.*—This category involves an act of commission or omission intentionally done for the purpose of defrauding the United States of revenue, or otherwise violating section 592. The maximum civil penalty for a fraudulent violation is the domestic value of the merchandise in the entry or entries concerned.

(2) *Gross Negligence.*—This category involves an act of commission or omission with actual knowledge of, or wanton disre-

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[34] 19 CFR 133.1-133.7.

[35] 19 CFR Part 133, Subpart B.

[36] Public Law 95-410, approved October 3, 1978, 92 Stat. 888.

[37] 19 U.S.C. 1592.

gard for, the relevant facts and a disregard of section 592 obligations, whereby the United States is or may be deprived of revenue, or where section 592 is otherwise violated. The maximum civil penalty for gross negligence is the lesser of the domestic value of the merchandise or four times the loss of revenue (actual or potential). If the infraction does not affect the revenue, the maximum penalty is 40 percent of the dutiable value of the goods.

(3) *Negligence.*—This category involves a failure to exercise due care in ascertaining the material facts or in ascertaining the obligations under section 592. The maximum civil penalty for negligence is the lesser of the domestic value of the merchandise or twice the loss of revenue (actual or potential). However, where there is no loss-of-revenue issue, the penalty cannot exceed 20 percent of the dutiable value.

In addition to the civil penalties described above, a criminal fraud statute provides for sanctions to those presenting false information to customs officers. Title 18, United States Code, section 542, provides a maximum of 2 years imprisonment, or a $5,000 fine, or both, for each violation involving an importation or attempted importation.

Foreign Trade Zones

The Foreign Trade Zones Act of 1934,[38] as amended, authorizes the establishment of foreign trade zones. A foreign trade zone (FTZ) is a special enclosed area within or adjacent to ports of entry, usually located at industrial parks or in terminal warehouse facilities. Although operated under the supervision and enforcement of the Customs Service, they are considered outside the Customs territory of the United States for purposes of Customs entry procedures. With certain exceptions, any foreign or domestic merchandise may be brought into a foreign trade zone for storage, sale, exhibition, breaking up, repacking, distribution, mixing with foreign or domestic merchandise, assembly, manufacturing, or other processing. Foreign merchandise imported into an FTZ is not subject to duty, formal entry procedures or quotas unless and until it is subsequently imported into U.S. Customs territory.

The framework that governs the establishment and operation of FTZs has three principal components. First, the Foreign-Trade Zones Act of 1934 (the Act) authorizes the establishment of FTZs and, as amended in 1950, allows manufacturing in FTZs.[39] Second, regulations, promulgated by both the Customs Service[40] and the Department of Commerce,[41] expand on the Act. A 1952 amendment to the regulations provided for the establishment of "subzones" in addition to general purpose zones. Third, the decision in *Armco Steel Corp.* v. *Stans* in 1970 validated the use of zone manufacturing to avoid customs duties and interpreted several key provisions of the Act.[42]

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[38] Act of June 18, 1934, ch. 590, 48 Stat. 998, 19 U.S.C. 81a-81u.

[39] Boggs amendment of 1959, ch. 296, 64 Stat. 246, 19 U.S.C. 81c.

[40] 19 CFR 146.0-48 (1980).

[41] 15 CFR 400.100-1406 (1980).

[42] 431 F.2d 779 (2d Cir. 1970), aff'g 303 F. Supp. 262 (S.D.N.Y. 1969).

Although legislation providing for foreign trade zones had been introduced as early as 1894, the first such statute was not enacted until 1934. Hearings on foreign-trade zone bills were held in 1934 by both the House and Senate.[43] The Committee on Ways and Means reported a bill with amendments [44] which passed the House May 9, 1934. The Senate debated, amended, and passed legislation inserting the text of its own bill. Following a conference, the Foreign Trade Zone Act was approved June 18, 1934.

The original purpose of the Act was to expedite and encourage foreign commerce. Initially, FTZs were little more than transshipment or consignment centers for the storage, repackaging, or light processing of foreign goods pending re-exportation. The 1934 Act prohibited the manufacture and exhibition of goods in FTZs. In 1950, however, Congress removed this prohibition by passing the so-called Boggs amendment (named after Mr. Boggs of Louisiana). The amendment added manufacturing to the list of activities permitted and authorized exhibition in zones.

The amendment to the FTZ regulations in 1952 that provided for the establishment of subzones is important to manufacturing and assembly operations in zones. The essential distinction between the two types of zones is that individual subzones, are generally used by only one firm, whereas there is no limitation on the number of firms that can operate in a general-purpose zone. Subzones were established to assist companies which were unable to relocate to or take advantage of an existing general-purpose zone.[45] Under the regulations, only a grantee of a previously approved general zone may apply to establish a subzone.

Authority for establishing these facilities is granted to qualified corporations, or political subdivisions, who must submit applications to the Department of Commerce's Foreign Trade Zones Board, comprised of the Secretary of Commerce (Chair), the Secretary of Treasury, and the Secretary of Army.[46] The Board's regulations set forth the basic requirements for applying and qualifying for a FTZ. The statute provides that every officially designated port of entry is entitled to at least one FTZ. Public hearings are often held by the Board staff in the locale involved. While most applications are noncontroversial, occasionally domestic industries or labor that are sensitive to imports will oppose a subzone application.

Section 3, which contains the basic substantive provisions of the Act, allows merchandise to be imported into FTZ's without being subject to U.S. Customs laws. The section regulates the tariff treatment of FTZ merchandise according to its status as foreign or domestic, and as privileged or nonprivileged.

One may apply for privileged status for foreign merchandise in an FTZ that has not yet been manipulated or manufactured so as to effect a change in its tariff classification. Foreign merchandise that is not privileged, recovered waste and merchandise that was originally domestic but can no longer be identified as such are deemed to be nonprivileged foreign merchandise. Domestic merchandise that would otherwise have been eligible for privileged status but for which no application was made is nonprivileged merchandise.

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[43] Foreign-Trade Zones: Hearings on H.R. 3657 Before a Subcomm. of the House Comm. on Ways and Means, 73d Cong. 2d Sess. (1934); Foreign-Trade Zones: Hearings on S. 1319 and S. 2001 Before a Subcomm. of the Senate Comm. on Commerce, 73d Cong., 2d Sess. (1934).

[44] House Report 1521.

[45] 15 CFR 400.304 (1983).

[46] 19 U.S.C. § 81a(b) (1976). The jurisdiction and authority of the Board are set forth in 15 CFR 400.200–203 (1980).

The status of the merchandise becomes significant when it enters U.S. customs territory. Customs appraises and classifies privileged foreign merchandise to determine the taxes and duties owed according to the condition of the merchandise when it enters a FTZ. The importer pays the previously determined taxes and duties when bringing the merchandise into U.S. customs territory regardless of any manufacturing or manipulation of the goods with other foreign or domestic privileged merchandise.

In contrast, merchandise that is composed entirely of or derived entirely from nonprivileged merchandise, either foreign or domestic, or of a combination of privileged and nonprivileged merchandise, is appraised and classified according to its condition when constructively transferred into U.S. customs territory. Thus, the duty and taxes payable on nonprivileged or combined merchandise are those applicable to its classification and value when it enters U.S. customs territory and not when it enters the zone. This distinction is an important potential advantage of zone-based operations.

According to the General Accounting Office (GAO) the number of zones and the dollar value of their business activities have increased dramatically in recent years. FTZ's grew from only 13 general purpose zones and 5 subzones in 1973 to 87 general purpose zones and 30 subzones by 1983.[47] GAO attributed the increase in part to a 1980 Treasury ruling holding that the dutiable value of finished products processed in the zone would be only the value attributable to the foreign components used and not the value added.

Finally, because section 3 of the Act allows an importer to elect to pay duty either on components and raw materials or on the completed article, the importer may reduce his tariff liability by manufacturing or assembling higher duty components into a lower duty product. This so-called inverted tariff, which is commonly characteristic of high technology merchandise, is also responsible for the recent growth in zone-based manufacturing and assembly of high value products, such as machinery, transportation equipment, electronics and chemicals.

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[47] Report to the Chairman, Committee on Ways and Means by the U.S. General Accounting Office, GAO/GGO-84-52, P.11, March 2, 1984.

Chapter 2: TRADE REMEDY LAWS

Unfair Trade Laws

ANTIDUMPING (AD) LAW

Title VII of the Tariff Act of 1930, as amended,[1] provides for the imposition of antidumping duties when foreign merchandise is being dumped in the U.S. market and is injuring the U.S. industry. Dumping generally refers to a form of international price discrimination, whereby goods are sold in an export market (such as the United States) at prices which are lower than the prices at which comparable goods are sold in the home market of the exporter or in other export markets. Antidumping law refers to such sales as sales at "less than fair value" (LTFV). Antidumping duties equal to the margin of dumping are imposed on all imports which cause material injury by reason of sales at less than fair value.

BACKGROUND

In 1916 the Congress passed the Antidumping Act of 1916, providing a civil cause of action in Federal court for private damages against parties who dumped foreign merchandise in the United States.[2] The requirements under this statute, however, particularly the need to show evidence of intent, are difficult to meet, and the need for a different type of antidumping law was considered by Congress. In 1921 the Antidumping Act of 1921 was passed, which provided the statutory basis, until 1979, for an administrative investigation by the Department of the Treasury of alleged dumping practices and for imposition of antidumping duties.[3]

During the post-World War II negotiations to establish an International Trade Organization, the United States proposed a draft article on dumping, based on the Antidumping Act of 1921. This draft became the basis for Article VI of the General Agreement on Tariffs and Trade (GATT), which is the international framework governing national antidumping laws.

During the 1960's, antidumping actions and their potential for abuse, rather than the dumping practice itself, became a source of great concern to many nations. As a result, during the Kennedy Round of Multilateral Trade Negotiations, the GATT Antidumping Code of 1967 was established. The GATT Code had three main functions: (1) to clarify and elaborate on the broad concepts of Article VI of the GATT; (2) to supplement Article VI by establishing appropriate procedural requirements for antidumping investigations; and (3) to bring all GATT signatory countries into conformity with Article VI. The GATT Antidumping Code came into force on July 1, 1968, and provided for the establishment for a GATT Committee on Antidumping Practices, whose function was to review annually the operation of national antidumping laws.

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[1] Public Law 71-361, title VII, as added by Public Law 96-39, title I, section 101, approved July 26, 1979, 19 U.S.C. 1673.

[2] Act of September 8, 1916, ch. 463, sec. 801, 39 Stat. 798, 15 U.S.C. 72.

[3] Act of May 27, 1921, ch. 14, 42 Stat. 11, 19 U.S.C. 160 (now repealed).

During the Tokyo Round of Multilateral Trade Negotiations in the 1970's, the GATT Antidumping Code was amended to conform to the newly negotiated Agreement Relating to Subsidies and Countervailing Measures, also negotiated at that time and involving changes in Article VI of the GATT. The GATT Agreement on Implementation of Article VI of the GATT, Relating to Antidumping Measures came into force on January 1, 1980.[4]

The Congress approved the revised GATT Antidumping Code under section 2a of the Trade Agreements Act of 1979.[5] Title I of the 1979 Act repealed the Antidumping Act of 1921 and added a new title VII to the Tariff Act of 1930 implementing the provisions of the agreement in a new antidumping law. In addition to the substantive and procedural changes made by the 1979 Act, the responsibility for administering the antidumping law was transferred from the Department of the Treasury to the Department of Commerce in 1979.[6] The antidumping law was further amended by title VI of the Trade and Tariff Act of 1984, which was passed on October 30, 1984.[7]

BASIC PROVISIONS

Section 731 of the Tariff Act of 1930, as amended,[8] provides that an antidumping duty shall be imposed, in addition to any other duty, if two conditions are met. First, the Department of Commerce (DOC) must determine that "a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value." Second, the International Trade Commission (ITC) must determine that "an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of that merchandise." If the DOC determines that LTFV sales exist and the ITC determines that material injury exists, an antidumping duty order is issued imposing antidumping duties equal to the amount by which foreign market value exceeds the United States price for the merchandise (the dumping margin).

Basis of comparison: Foreign market value

The determination of whether LTFV sales exist, and what the margin of dumping is, is based on a comparison of foreign market value with the United States price of each import sale made during the relevant time period under investigation. Foreign market value is determined by one of three methods, in order of preference:

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[4] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, MTN/NTM/W/232, reprinted in House Doc. No. 96-153, pt. I at 311.

[5] Public Law 96-39, approved July 26, 1979.

[6] Reorganization Plan No. 3, Exec. Order No. 12188, January 4, 1980, 44 Fed. Reg. 69273.

[7] Public Law 98-573, approved October 30, 1984. Technical corrections to the 1984 amendments were included in section 1886 of the Tax Reform Act of 1986, Public Law 99-514, approved October 22, 1986.

[8] 19 U.S.C. 1673.

home market sales, third-country sales, or constructed value. If such or similar merchandise is sold in the market of the exporting country for home consumption, then foreign market value is to be based on such sales. If home market sales do not exist, or are so few as to form an inadequate basis for comparison, then the price at which such or similar merchandise is sold for exportation to countries other than the United States becomes the basis for foreign market value. If neither home market sales nor third-country sales form an adequate basis for comparison, then foreign market value is the constructed value of the imported merchandise. Constructed value is determined by a formula set forth in the statute, which is the sum of costs of production, plus at least 10 percent for general expenses, plus at least 8 percent for profit.

Foreign market value based on home market or third-country sales is a single price, in U.S. dollars, which represents the weighted average of prices in the home market or third-country market during the period under investigation. Sales made at less than cost of production are disregarded in the determination of foreign market value. Adjustments are made for differences in merchandise, quantities sold, and circumstances of sale to provide [9] for comparability of foreign market value with United States price. Averaging or sampling techniques may be used in the determination of foreign market value whenever a significant volume of sales is involved or a significant number of price adjustments is required.

If the economy of the exporting country is state-controlled to an extent that home market sales or third-country sales of such or similar merchandise do not permit a determination of foreign market value, then foreign market value is based on surrogate country prices. Under this approach, foreign market value is based on normal costs, expenses, and profit as reflected by either (1) prices at which such or similar merchandise of a non-state-controlled-economy country is sold for consumption in its home market or to other countries, including the United States, or (2) the constructed value in a non-state-controlled-economy country.

United States price

The margin of dumping, and the amount of antidumping duty to be imposed, is determined by comparing the foreign market value with the United States price of each entry into the United States of foreign merchandise subject to the investigation. United States price is equal to the purchase price or the exporter's sales price of the merchandise, whichever is appropriate. "Purchase price" is the price at which merchandise is purchased or agreed to be purchased prior to date of importation to the United States. It may be used if transactions between related parties indicate the merchandise has been sold prior to importation to a U.S. buyer unrelated to the producer. "Exporter's sales price" is the price at which merchandise is sold or agreed to be sold in the United States before or after importation, by or for the account of the exporter.

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[9] Section 624 of the Trade and Tariff Act of 1984 requires the Secretary of Commerce to undertake a study of current practices that are applied in making adjustments to purchase price, exporter's sales price, foreign market value, and constructed value in determining dumping duties. The Secretary was required to complete the study by October 31, 1985, and submit a written report to the Congress. The report was to study current practices and to include whatever recommendations for change the Secretary deemed appropriate in order to simplify and modify adjustment practices. The Secretary's report concluded that the current statutory provisions governing adjustments are adequate and provide the Department of Commerce with the authority to take into account all relevant factors to ensure that antidumping calculations are computed in a fair and accurate manner.

Material injury

Prior to issuance of an antidumping duty order, the ITC must determine that the domestic industry is being materially injured, or threatened with material injury, or the establishment of a domestic industry is materially retarded, by reason of imports at less than fair value. The standard of injury under the antidumping law, material injury, is the same standard as that under the countervailing duty law. Section 771(7) of the Tariff Act of 1930 defines "material injury" as harm which is not inconsequential, immaterial, or unimportant.

The ITC determination of injury basically involves a two-prong inquiry: first, with respect to the fact of material injury, and second, with respect to the causation of such material injury. The ITC is required to analyze the volume of imports, the effect of imports on U.S. prices of like merchandise, and the effects that imports have on U.S. producers of like products, taking into account many factors, including lost sales, market share, profits, productivity, return on investment, and utilization of production capacity. Also relevant are the effects on employment, inventories, wages, and the ability to raise capital. The ITC is required to cumulatively assess the volume and effect of like imports from two or more countries subject to investigation if the imports compete with each other and with like products of the domestic industry in the U.S. market.

PROCEDURES FOR ANTIDUMPING INVESTIGATIONS

Initiation of investigation

Antidumping investigations may be self-initiated by the DOC or may be initiated as a result of a petition filed by an interested party. Petitions may be filed by any of the following, on behalf of the affected industry: (1) a manufacturer, producer, or wholesaler in the United States of a like product; (2) a certified or recognized union or group of workers which is representative of the affected industry; (3) a trade or business association with a majority of members producing a like product; (4) a coalition of firms, unions, or trade associations that have individual standing. The DOC is required to provide technical assistance to small businesses to enable them to prepare and file petitions under the antidumping law.

Petitions are to be filed simultaneously with both the DOC and ITC. Within 20 days after the filing of a petition, the DOC must decide whether or not the petition is legally sufficient to commence an investigation. If so, an investigation is initiated with respect to imports of a particular product from a particular country. Section 609 of the Trade and Tariff Act of 1984 establishes a procedure whereby the DOC may monitor imports from additional supplier countries for up to 1 year in order to determine whether persistent dumping exists with respect to that product, and self-initiation of additional dumping cases is warranted.

Preliminary ITC injury determination

Within 45 days of the date of filing of the petition, or of self-initiation, the ITC must determine whether there is a "reasonable indication" of material injury, based on the best information available to it at the time. The petitioner bears the burden of proof with respect to this issue. If the ITC preliminary determination is negative, the investigation is terminated. If it is positive, the investigation proceeds.

Preliminary DOC LTFV determination

Within 160 days after the petition is filed or the investigation is self-initiated, the DOC must determine whether there is a "reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold, at less than fair value." The preliminary determination is based on the best information available to DOC at the time. If affirmative, the preliminary determination must include an estimated average amount by which the foreign market value exceeds the United States price.

The effect of an affirmative preliminary determination is twofold: (1) The DOC must order the suspension of liquidation of all entries of foreign merchandise subject to the determination from the date of publication of the preliminary determination. The DOC must also order the posting of a cash deposit, bond, or other appropriate security for each subsequent entry of the merchandise equal to the estimated margin of dumping. (2) The ITC must begin its final injury investigation, and DOC must make all information available to ITC which is relevant to an injury determination. If the preliminary determination is negative, no suspension of liquidation occurs, and the DOC investigation simply continues.

An expedited preliminary determination within 90 days of initiation of the investigation may be made based on information received during the first 60 days if such information is sufficient and the parties provide a written waiver of verification and an agreement to have an expedited preliminary determination. On the other hand, the preliminary determination may be postponed until 210 days after filing of petition or self-initiation, at the petitioner's request or in cases which DOC determines are extraordinarily complicated.

If the petitioner alleges critical circumstances, the DOC must determine, on the basis of best information available at the time, whether (1) there is a history of dumping in the United States or elsewhere of this class or kind of merchandise, or the importer knew the merchandise was being sold at less than fair value; and (2) there have been massive imports of the merchandise over a relatively short period. If DOC determines critical circumstances exist, then any suspension of liquidation ordered shall retroactively apply to unliquidated entries of merchandise entered up to 90 days prior to the date suspension of liquidation was ordered.

Final DOC LTFV determination

Within 75 days after the date of its preliminary determination, DOC must issue a final LTFV determination, unless a timely request for extension is granted, in which case the final determination must be made within 135 days. If the final determination is negative, the investigation is terminated, including any suspension of liquidation which may be in effect, and all estimated antidumping duties are refunded and all appropriate bonds or other security are released. If the final determination is affirmative, the DOC orders the suspension of liquidation and posting of a cash deposit, bond, or other security (if such actions have not already been taken as a result of the preliminary determination), and awaits notice of the ITC final injury determination.

Final ITC injury determination

Within 120 days of a DOC affirmative preliminary determination or 45 days of a DOC affirmative final determination, whichever is longer, the ITC must make a final determination of material injury. If the DOC preliminary determination was negative, and the DOC final determination was affirmative, ITC has until 75 days after the final affirmative determination to make its injury determination.

Termination or suspension of AD investigations

Either the DOC or ITC may terminate an AD investigation upon withdrawal of the petition by petitioner, or by DOC if the investigation was self-initiated. The DOC may not, however, terminate an investigation on the basis of a quantitative restriction agreement limiting U.S. imports of the merchandise subject to investigation unless DOC is satisfied that termination on the basis of such agreement is in the public interest.

The DOC may suspend an AD investigation on the basis of one of three types of agreements entered into with exporters who account for substantially all of the imports under investigation. The three types of agreements are: (1) an agreement to cease exports of the merchandise to the United States within 6 months of suspension of the investigation; (2) an agreement to revise prices to eliminate completely any sales at less than fair value; (3) an agreement to revise prices to eliminate completely the injurious effect of exports of such merchandise to the United States. The DOC may not, however, accept any such agreement unless it is satisfied that suspension of the investigation is in the public interest, and effective monitoring of the agreement is practicable. Unlike countervailing duty cases, antidumping investigations cannot be suspended on the basis of quantitative restriction agreements.

Prior to actual suspension of an investigation, the DOC must provide notice of its intent to suspend and an opportunity for comment by interested parties. When the DOC decides to suspend the investigation, it must publish notice of the suspension, and issue an affirmative preliminary LTFV determination (unless previously issued). The ITC also suspends its investigation. Any suspension of liquidation ordered as a result of the affirmative preliminary LTFV determination, however, is to be terminated and all deposits of estimated antidumping duties or bonds posted are to be refunded or released.

If, within 20 days after notice of suspension is published, the DOC receives a request for continuation of the investigation from a domestic interested party or from exporters accounting for a significant proportion of exports of the merchandise, then both the DOC and ITC must continue their investigations.

The DOC has responsibility for overseeing compliance with any suspension agreement. Intentional violations of suspension agreements are subject to civil penalties.

ASSESSMENT OF ANTIDUMPING DUTIES

Both the DOC and ITC must issue affirmative final determinations in order for an AD duty order to be issued. Within 7 days of notice of an affirmative final ITC determination, DOC must issue an AD duty order which (1) directs the Customs Service to assess antidumping duties equal to the amount by which foreign market value exceeds the United States price, i.e., the dumping margin; (2) describes the merchandise to which the AD duty applies; and (3) requires the deposit of estimated AD duties pending liquidation of entries, at the same time as estimated normal customs duties are deposited. Customs must assess AD duties within 6 months after DOC receives satisfactory information on which to base the assessment, but no later than 12 months after the end of the annual accounting period within which the merchandise is imported or sold in the United States. The DOC must publish notice of its determination of foreign market value and United States price which shall be the basis for assessment of AD duties and for deposit of estimated AD duties on future entries.

Security in lieu of deposits

The DOC may permit, for not more than 90 days after publication of an AD duty order, the posting of a bond or other security in lieu of the deposit of estimated AD duties if certain conditions exist. The DOC must be satisfied that it will be able to determine, within such 90-day period, the foreign market value and the United States price for all merchandise entered on or after an affirmative LTFV determination (either preliminary or final, whichever is the first affirmative determination) and before publication of an affirmative final injury determination. The determination of such new dumping margin will then provide the basis for assessment of AD duties on the entries for which the posting of bond or other security has been permitted, and will also provide the basis for deposits of estimated AD duties on future entries.

Differences between estimated and final AD duties

If a cash deposit collected as security for estimated AD duties pursuant to an affirmative preliminary LTFV determination is greater than the amount of AD duty assessed pursuant to an AD duty order, then the difference between the deposit and the amount of final AD duty will be refunded for entries prior to notice of the final injury determination. If the cash deposit is lower than the final AD duty under the AD order, then the difference is disregarded. No interest accrues in either case.

If estimated AD duties deposited for entries pending liquidation are greater than the amount of final AD duties determined under an AD order, then the difference will be refunded, together with interest on the amount of overpayment. If estimated AD duties are less than the amount of final AD duties, then the difference will be collected together with interest on the amount of such underpayment.

ADMINISTRATIVE REVIEW

The DOC is required to conduct an annual review of outstanding AD orders and suspension agreements upon request. For all entries of merchandise subject to the review, DOC must determine the foreign market value, United States price, and the amount of dumping margin. Such determination will provide the basis for assessment of AD duties on all entries subject to the review, and for deposits of estimated duties on entries subsequent to the period of review. The results of its annual review must be published together with a notice of any AD duty to be assessed, estimated duty to be deposited, or investigation to be resumed.

A review of a final determination or of a suspension agreement shall be conducted by DOC or ITC whenever it receives information or a request showing changed circumstances sufficient to warrant such review. Without good cause shown, however, no final determination or suspension agreement can be reviewed within 24 months of its notice. The party seeking revocation of an AD order has the burden of persuasion as to whether there are changed circumstances sufficient to warrant revocation.

JUDICIAL REVIEW

An interested party who is dissatisfied with a final determination under the antidumping law may file an action in the U.S. Court of International Trade for judicial review. To obtain judicial review of the administrative action, a summons and complaint must be filed concurrently within 30 days of publication of the final determination. The standard of review used by the Court is whether the determination is supported by "substantial evidence on the record" or "otherwise not in accordance with law."

Judicial review of interlocutory decisions, previously permitted, was eliminated by section 623 of the Trade and Tariff Act of 1984. Decisions of the Court of International Trade are subject to appeal to the U.S. Court of Appeals for the Federal Circuit.

Summary of investigations under antidumping law since January 1980

Petitions received	365
Petitions dismissed	14
Initiations	336
ITC preliminary injury determinations:	
Negative	58
Affirmative	255
DOC final LTFV determinations:	
Negative	17
Affirmative	55
ITC final injury determinations:	
Negative	38
Affirmative	92
Suspensions of investigation	6
Withdrawals of petition	103
Final AD orders	74

Source: Department of Commerce, Import Administration.

COUNTERVAILING DUTY (CVD) LAW

The Tariff Act of 1930, as amended, provides for the imposition of additional duties whenever a subsidy is bestowed by a foreign country upon the manufacture or production for export of any article which is subsequently imported into the United States. There are currently two separate provisions of the Tariff Act which govern the imposition of countervailing duties. Subtitle A of title VII of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979 and amended by the Trade and Tariff Act of 1984,[10] applies to imports from countries which are signatories to the GATT Agreement Relating to Subsidies and Countervailing Measures,[11] commonly referred to as the Subsidies Code, or which have assumed obligations substantially equivalent to those of the Code. For imports from these countries, an injury test is required prior to imposition of countervailing duties. Imports from countries which have not signed the Subsidies Code or assumed substantially equivalent obligations, are subject to the provisions of section 303 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979,[12] and are generally not afforded an injury test in countervailing duty cases. Other than the requirement of an injury test, however, the provisions of the countervailing duty law under the two separate sections are the same.

The purpose of the countervailing duty law is to offset any unfair competitive advantage that foreign manufacturers or exporters might enjoy over U.S. producers as a result of foreign subsidies. Countervailing duties equal to the net amount of the subsidies are imposed upon importation of the subsidized goods into the United States.

BACKGROUND

The first U.S. statute dealing with unfair trade practices was a countervailing duty law passed in 1897. The provisions of the 1897 statute remained substantially the same until 1979, when the U.S. countervailing duty law was changed to conform with the agreement reached in the Tokyo Round of Multilateral Trade Negotiations.

The pre-1979 law required the Secretary of the Treasury to assess countervailing duties on imported dutiable merchandise benefiting from the payment or bestowal of a "bounty or grant." The 1897 law authorized countervailing duties against any bounty or grant on exportation of foreign articles; in 1922 Congress amended the provision to cover bounties or grants on manufacture or production as well as on exportation. The amount of the countervailing duty was to equal the net amount of the "bounty or grant." Prior to 1974 the law applied only to dutiable merchandise and afforded no injury test.

Article VI of the GATT, governing the imposition of countervailing measures by GATT signatories, requires evidence of injury prior to imposition of countervailing duties. The grandfather clause of the GATT, however, allowed the U.S. law to operate without an injury test since the U.S. law predated the GATT.

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[10] 19 U.S.C. 1671.

[11] Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures), MTN/NTM/W/236, reprinted in House Doc. No. 98-153, pt. I at 257.

[12] 19 U.S.C. 1303.

Although the substantive requirements of the countervailing duty law remained virtually the same, the Trade Act of 1974 made two important changes to the CVD law. First, it extended the application of the countervailing duty law for the first time to duty-free imports, subject to an injury test. Second, it made extensive changes in many procedural aspects of the law, which had the effect of limiting executive branch discretion in administering the CVD statute.

GATT Subsidies Code

During the Tokyo Round of Multilateral Trade Negotiations, a multilateral agreement governing the use of subsidies and countervailing measures was concluded and signed by the United States. In order to enforce obligations with regard to the use of subsidies, the agreement provides for improved international procedures for notification, consultation and dispute settlement and, where a breach of an obligation concerning the use of subsidies is found to exist, or a right to relief exists, countermeasures are contemplated. In addition to the availability of countermeasures through the dispute settlement process, countries could also take traditional countervailing duty action to offset subsidies upon a showing of material injury to a domestic industry. The agreement sets out criteria for material injury determinations.

The key provisions of the agreement are as follows:

1. Flat prohibition of export subsidies on non-primary products as well as primary mineral products.
2. A description of export subsidies which supersedes the existing requirement that an export subsidy must result in export prices lower than prices for domestic sales, and includes an updated illustrative list of subsidy practices.
3. With respect to domestic subsidies, for the first time in an international agreement, explicit recognition that while they are often used to promote important objectives of national policy, they can also have harmful trade effects; relief (including countermeasures) is permissible where such subsidies (a) injure domestic producers; and (b) nullify or impair benefits of concessions under the GATT (including tariff bindings); or (c) cause serious prejudice to the interests of other signatories.
4. Recognition that where domestic subsidies are granted on non-commercial terms, trade distortions are especially likely to arise; commitment by signatories to "take into account" conditions of world trade and production (e.g., prices, capacity, etc.) in fashioning their subsidy practices.
5. Improved discipline on use of export subsidies for agriculture. Prohibition on such subsidies when used in a manner which (a) displaces the exports of others or (b) involves material price undercutting in a particular market.
6. Provision for special and differential treatment under which developing countries could not use export subsidies where such subsidies adversely affect the trade or production interests of other

countries; provision for negotiated phase-outs of export subsidies by developing countries.

7. Tight dispute settlement process.

8. Greater transparency regarding subsidy practices (including provision for notification to the GATT of practices of other countries).

9. For countervailing duty actions, an injury and causation test designed to afford relief where subsidized imports (whether an export or domestic subsidy is involved) impact on U.S. producers either through volume or through effect on prices.

10. Greater transparency in the administration of countervailing duty laws and regulations.

Application of GATT Subsidies Code to U.S. law

Congress approved the GATT Subsidies Code under section 2a of the Trade Agreements Act of 1979. Section 101 of the 1979 Act added a new title VII to the Tariff Act of 1930, containing the new provisions of the countervailing duty law to conform to U.S. obligations under the Subsidies Code. One of the most fundamental changes made by the 1979 Act is the requirement of an injury test in all CVD cases involving imports from "countries under the Agreement"—countries which either are signatories to the Subsidies Code or have assumed substantially equivalent obligations to those under the Code. The provisions of the preexisting section 303 were retained, however, for cases involving imports from countries which are not "countries under the Agreement." Other changes made by the 1979 Act include the grant of provisional relief for the first time, reduction of the time periods for investigation, and greater opportunities for participation by interested parties.

In 1979, under President Carter's Reorganization Plan No. 3, the responsibility for administering the countervailing duty statute was transferred from the Department of the Treasury to the Department of Commerce.[13]

In 1984, the Trade and Tariff Act of 1984 modified the application of the CVD law to "upstream subsidies"—subsidies bestowed on inputs which are then incorporated into the manufacture of a final product which is exported to the United States. The 1984 Act also made certain other clarifications and procedural changes to the law.

BASIC PROVISIONS

Section 701 of the Tariff Act of 1930, as amended,[14] provides that a countervailing duty shall be imposed, in addition to any other duty, equal to the amount of net subsidy if two conditions are met. First, the Department of Commerce (DOC) must determine that a subsidy is being provided, directly or indirectly, "with respect to the manufacture, production, or exportation of a class or kind of merchandise imported into the United States" and must determine the amount of the net subsidy. Second, the International Trade Commission (ITC) must determine that "an industry in the United

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[13] Exec. Order No. 12188, January 4, 1980, 44 Fed. Reg. 69273.

[14] 19 U.S.C. 1671.

States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of that merchandise." The countervailing duty will apply whether the merchandise is imported directly or from third countries, and whether or not in the same condition as when exported.

Section 303 of the Tariff Act of 1930, as amended, applies to imports from countries which are not "countries under the Agreement." Under section 303 the second condition of an injury test is not required, except for cases involving duty-free imports from GATT members.

Net Subsidy

Countervailing duties are imposed in the amount of the net subsidy as determined by the DOC. Subsidies are direct and/or indirect grants for the production or exportation of goods. They can take many forms, including direct cash benefits, credits against taxes, and loans with artificially low interest rates.

Although the statute does not provide an explicit definition of the term "subsidy," it provides that the term shall mean the same as "bounty or grant" under section 303, and provides an illustrative list of subsidies. The list includes, but is not limited to, any export subsidy described in Annex A of the Subsidies Code, and certain specified domestic subsidies if provided to a specific enterprise or industry, or group of enterprises or industries.

To determine the amount of net subsidy on which the CVD will be based, DOC may subtract from gross subsidy the amount of:

(a) any application fee, deposit, or similar payment paid to qualify for or receive the subsidy;

(b) any loss in the subsidy value resulting from deferred receipt mandated by government order; and

(c) export taxes, duties, or other charges on exports to the United States specifically intended to offset the subsidy.

Section 613 of the Trade and Tariff Act of 1984 clarifies the scope of the countervailing duty law with respect to upstream subsidies. An upstream subsidy is defined as any subsidy described in present law that:

(1) is paid or bestowed by a government with respect to an input used to manufacture or produce in that same country merchandise subject to a CVD proceeding;

(2) in the judgment of the DOC bestows a competitive benefit on that merchandise; and

(3) has a significant effect on the cost of manufacture or production of the merchandise.

With regard to the second criterion, the DOC shall decide that a competitive benefit has been bestowed when the price for the input used in manufacture or production of the merchandise subject to investigation is lower than the price the manufacturer or producer would otherwise pay for the input from another seller in an arms-length transaction. Whenever DOC has reasonable grounds to believe or suspect an upstream subsidy is being paid or bestowed, the DOC must investigate whether it is in fact and, if so, include the amount of any competitive benefit, not to exceed the amount of upstream subsidy, in the amount of any CVD imposed on the merchandise under investigation.

The provision on upstream subsidies added by the 1984 Act does not affect the basic definition of subsidy in any way. The potential for an upstream subsidy exists only when a sector-specific benefit meeting all the other criteria of being a subsidy is provided to the input producer. The provision is also limited to subsidies paid or bestowed by the country in which the final product is manufactured.

Material injury

Prior to issuance of a countervailing duty order under title VII, the ITC must determine that the domestic industry is being materially injured, or threatened with material injury, or the establishment of a domestic industry is materially retarded, by reason of subsidized imports. The standard of injury under the countervailing duty law, material injury, is the same standard as that under the antidumping law. Section 771(7) of the Tariff Act of 1930 defines "material injury" as harm which is not inconsequential or unimportant.

The ITC determination of injury basically involves a two-prong inquiry: first, with respect to the fact of material injury, and second, with respect to the causation of such material injury. The ITC is required to analyze the volume of imports, the effect of imports on U.S. prices of like merchandise, and the effects that U.S. imports have on U.S. producers of like products, taking into account many factors, including lost sales, market share, profits, productivity, return on investment, and utilization of production capacity. Also relevant are the effects on employment, inventories, wages, and the ability to raise capital. The ITC is required to cumulatively assess the volume and effect of like imports from two or more countries subject to investigation if the imports compete with each other and with like products of the U.S. industry.

PROCEDURES FOR COUNTERVAILING DUTY INVESTIGATIONS

Initiation of investigation

Countervailing duty investigations may be self-initiated by the DOC or may be initiated as a result of a petition filed by an interested party. Petitions may be filed by any of the following, on behalf of the affected industry: (1) a manufacturer, producer, or wholesaler in the United States of a like product; (2) a certified or recognized union or group of workers which is representative of the affected industry; (3) a trade or business association with a majority of members producing a like product; (4) a coalition of firms, unions, or trade associations that have individual standing. The DOC is required to provide technical assistance to small businesses to enable them to prepare and file petitions under the CVD law.

Petitions are to be filed simultaneously with both the DOC and ITC. Within 20 days after the filing of a petition, the DOC must decide whether or not the petition is legally sufficient to commence an investigation. If so, an investigation is initiated with respect to imports of a particular product from a particular country.

Preliminary ITC injury determination

Within 45 days of the date of filing of the petition, or of self-initiation, the ITC must determine whether there is a "reasonable indication" of material injury, based on the best information available to it at the time. The petitioner bears the burden of proof with respect to this issue. If the ITC preliminary determintion is negative, the investigation is terminated. If it is positive, the investigation proceeds.

Preliminary DOC determination

Within 85 days after the petition is filed or the investigation is self-initiated, the DOC must determine whether there is a "reasonable basis to believe or suspect that a subsidy is being provided." In cases involving upstream subsidies, the time period may be extended to 250 days. This preliminary determination is based on best information available to it at the time. If affirmative, the preliminary determination must include an estimated amount of the net subsidy.

An expedited preliminary determination may be made based on information received during the first 50 days if such information is sufficient and the parties provide a written waiver of verification and an agreement to have an expedited preliminary determination. On the other hand, the preliminary determination may be postponed until 150 days after filing of petition or self-initiation, at the petitioner's request or in cases which DOC determines are extraordinarily complicated.

The effect of an affirmative preliminary determination is twofold: (1) the DOC must order the suspension of liquidation of all entries of foreign merchandise subject to the determination from the date of publication of the preliminary determination. The DOC must also order the posting of a cash deposit, bond, or other appropriate security for each subsequent entry of the merchandise equal to the estimated amount of the net subsidy; (2) the ITC must begin its final injury investigation, and DOC must make all information available to the ITC which is relevant to an injury determination. If the preliminary determination is negative, no suspension of liquidation occurs, and the DOC investigation simply continues.

In cases involving "countries under the Agreement," if the petitioner alleges critical circumstances, the DOC must determine, on the basis of best information available at the time, whether (1) the alleged subsidy is inconsistent with the GATT Subsidies Code; and (2) there have been massive imports of the merchandise over a relatively short period. If the DOC determines critical circumstances exist, then any suspension of liquidation ordered shall retroactively apply to unliquidated entries of merchandise entered up to 90 days prior to the date suspension of liquidation was ordered.

Final DOC subsidy determination

Within 75 days after the date of its preliminary determination, the DOC must issue a final subsidy determination, unless the case involves upstream subsidies, in which case special extended time limits apply. If there are simultaneous investigations under the antidumping and countervailing duty laws involving imports of the same merchandise, the final CVD determination may be postponed until the date of the final determination in an antidumping investigation at the request of a petitioner.

If the final subsidy determination is negative, the investigation is terminated, including any suspension of liquidation which may be in effect, and all estimated countervailng duties are refunded and all appropriate bonds or other security are released. If the final determination is affirmative, the DOC orders the suspension of liquidation and posting of a cash deposit, bond, or other security (if such actions have not already been taken as a result of the preliminary determination), and awaits notice of the ITC final injury determination.

Final ITC injury determination

Within 120 days of a DOC affirmative preliminary determination or 45 days of a DOC affirmative final determination, whichever is longer, the ITC must make a final determination of material injury. If the DOC preliminary determination was negative, and the DOC final determination was affirmative, the ITC has until 75 days after the final affirmative determination to make its injury determination.

Termination or suspension of CVD investigations

Either the DOC or ITC may terminate a CVD investigation upon withdrawal of the petition by petitioner, or by DOC if the investigation was self-initiated. The DOC may not, however, terminate an investigation on the basis of a quantitative restriction agreement limiting U.S. imports of the merchandise subject to investigation unless the DOC is satisfied that termination on the basis of such agreement is in the public interest.

The DOC may suspend a CVD investigation on the basis of one of three types of agreements entered into with the foreign government or with exporters who account for substantially all of the imports under investigation. The three types of agreements are: (1) an agreement to eliminate the subsidy completely or to offset completely the amount of the net subsidy within 6 months after suspension of the investigation; (2) an agreement to cease exports of the subsidized merchandise to the United States within 6 months of suspension of the investigation; (3) an agreement to eliminate completely the injurious effect of subsidized exports to the United States (which, unlike under the antidumping law, may be based on quantitative restrictions). The DOC may not, however, accept any such agreement unless it is satisfied that suspension of the investigation is in the public interest, and effective monitoring of the agreement is practicable.

Prior to actual suspension of an investigation, the DOC must provide notice of its intent to suspend and an opportunity for comment by interested parties. When the DOC decides to suspend the investigation, it must publish notice of the suspension, and issue an affirmative preliminary determination (unless previously issued). The ITC also suspends its investigation. Any suspension of liquidation ordered as a result of the affirmative preliminary determination, however, is to be terminated and all deposits of estimated countervailing duties or bonds posted are to be refunded or released.

If, within 20 days after notice of suspension is published, the DOC receives a request for continuation of the investigation from a domestic interested party or from the foreign government, then both the DOC and ITC must continue their investigations.

The DOC has responsibility for overseeing compliance with any suspension agreement. Intentional violations of suspension agreements are subject to civil penalties.

ASSESSMENT OF CVD DUTIES

Under title VII, both the DOC and ITC must issue affirmative final determinations in order for a CVD duty order to be issued. Within 7 days of notice of an affirmative final ITC determination, the DOC must issue a countervailing duty order which (1) directs the Customs Service to assess countervailing duties equal to the amount of the net subsidy; (2) describes the merchandise to which the CVD applies; and (3) requires the deposit of estimated CVD's pending liquidation of entries, at the same time as estimated normal customs duties are deposited. Customs must assess countervailing duties within 6 months after the DOC receives satisfactory information on which to base the assessment, but no later than 12 months after the end of the annual accounting period within which the merchandise is imported or sold in the United States. The DOC must publish notice of its determination of net susidy which shall be the basis for assessment of CVD's and for deposit of estimated CVD's on future entries.

Differences between estimated and final CVD's

If the cash deposit, bond, or other security for estimated countervailing duties pursuant to an affirmative preliminary determination is greater than the amount of CVD assessed pursuant to a CVD order, then the difference between the deposit and the amount of final CVD will be refunded for entries prior to notice of the final injury determination. If the cash deposit is lower than the final CVD under the CVD order, then the difference is disregarded. No interest accrues in either case.

If estimated countervailing duties deposited for entries pending liquidation are greater than the amount of final CVD's determined under a CVD order, then the difference will be refunded, together with interest on the amount of overpayment. If estimated CVD's are less than the amount of final CVD's then the difference will be collected together with interest.

ADMINISTRATIVE REVIEW

The DOC is required to conduct an annual review of outstanding CVD orders and suspension agreements, upon request. For all entries of merchandise subject to the review, DOC must review and determine the amount of any net subsidy. Such determination will provide the basis for assessment of CVD's on all entries subject to the review, and for deposits of estimated duties on entries subsequent to the period of review. The results of its annual review must be published together with a notice of any CVD to be assessed, estimated duty to be deposited, or investigation to be resumed. The DOC cannot, however, revoke a CVD order or terminate a suspended investigation on the basis of offsets.

A review of a final determination or of a suspension agreement shall be conducted by DOC or ITC whenever it receives information or a request showing changed circumstances sufficient to warrant such review. Without good cause shown, however, no final determination or suspension agreement can be reviewed within 24 months of its notice.

JUDICIAL REVIEW

An interested party who is dissatisfied with a final determination under the countervailing duty law may file an action in the U.S. Court of International Trade for judicial review. To obtain judicial review of the administrative action, a summons and complaint must be filed concurrently within 30 days of publication of the final determination. The standard of review used by the Court is whether the determination is supported by "substantial evidence on the record, or otherwise not in accordance with law."

Judicial review of interlocutory decisions, previously permitted, was eliminated by section 623 of the Trade and Tariff Act of 1984. Decisions of the Court of International Trade are subject to appeal to the U.S. Court of Appeals for the Federal Circuit.

Summary of investigations under countervailing duty law since January 1980

Petitions received	293
Petitions dismissed	8
Initiations	282
ITC preliminary injury determinations:	
Negative	64
Affirmative	139
DOC final determinations:	
Negative	20
Affirmative	147
ITC final injury determinations:	
Negative	66
Affirmative	41
Suspensions of investigation	31
Withdrawals of petition	84
Final CVD orders	74

Source: Department of Commerce, Import Administration.

ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN PRACTICES: SECTION 301 OF THE TRADE ACT OF 1974

Chapter 1 of title III of the Trade Act of 1974, as amended [15] (commonly referred to as section 301), provides the authority and procedures for the President to enforce U.S. rights under international trade agreements and to respond to certain unfair foreign practices. The predecessor statute, section 252 of the Trade Expansion Act of 1962 [16] was repealed and section 301 established in its place under the Trade Act of 1974. Section 301 was amended under title IX of the Trade Agreements Act of 1979 [17] in two principal respects to constitute basically the current statute: (1) to include specifically enforcement of U.S. rights and responses to actions by foreign countries inconsistent with or otherwise denying U.S. benefits under trade agreements; and (2) to place specific time limits on each step of the procedures for investigating and taking action on petitions. Some further amendments were enacted under sections 304 and 307(b) of the Trade and Tariff Act of 1984 [18] to clarify certain authorities and practices covered by section 301, and to authorize certain actions with respect to foreign export performance requirements.

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[15] Public Law 93-618, approved January 3, 1975, 19 U.S.C. 2411.

[16] Public Law 87-794, sec. 252, approved October 11, 1962.

[17] Public Law 96-39, title IX, approved July 26, 1979.

INTERNATIONAL CONSULTATIONS AND DISPUTE SETTLEMENT

Articles XII and XIII of the General Agreement on Tariffs and Trade (GATT) as elaborated upon by the MTN Texts Concerning a Framework for the Conduct of World Trade,[19] provides the general consultation and dispute settlement procedures applicable to GATT rights and obligations. In addition, the GATT agreements concluded in the 1973-79 Multilateral Trade Negotiations (MTN) on specific nontariff barriers each contain procedures for consulting and seeking to resolve disputes among signatories concerning practices covered by each agreement.

While the specific mechanisms and time limits vary, the general common principles include (1) provisions for bilateral and multilateral consultations seeking to reach a mutually satisfactory solution without resort to dispute settlement; (2) the right of any signatory to a panel, composed of 3 to 5 impartial experts from countries not parties to the dispute acting in their individual capacities, which reviews the dispute and makes findings of fact and law; and (3) submission of panel findings to the Committee on Signatories to the particular MTN agreement or to the GATT Council which reviews the decision and may authorize retaliatory action.

U.S. ENFORCEMENT AUTHORITY AND PROCEDURES

Chapter 1 of title III of the Trade Act of 1974, as amended, provides the domestic counterpart to the GATT consultation and dispute settlement procedures and authority for the President to impose import restrictions as retaliatory action, if necessary to enforce U.S. rights against unjustifiable or unreasonable foreign trade practices which burden, restrict, or discriminate against U.S. commerce. The broad inclusive nature of section 301 authority applies to practices and policies of countries whether or not they are covered by, or are members of, GATT or other trade agreements. The U.S. Trade Representative (USTR) administers the statutory procedures through an interagency committee.

Presidential authority

Under section 301, *if* the President determines that action is appropriate:

(1) to enforce U.S. rights under any trade agreement; or

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[18] Public Law 98-573, approved October 30, 1984.

[19] MTN/FR/W/20/Rev. 2, reprinted in House Doc. No. 96-153, pt. I at 619.

> (2) to respond to any act, policy, or practice of a foreign country or instrumentality that (a) is inconsistent with the provisions of, or otherwise denies U.S. benefits under, any trade agreement, or (b) is unjustifiable, unreasonable, or discriminatory and burdens or restricts U.S. commerce,

then the President *must* take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of the act, policy, or practice.

In addition, the President *may* (1) suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with the foreign country involved; and (2) impose duties or other import restrictions on the goods of, and notwithstanding any other provision of law, fees or restrictions on the services of, the foreign country for such time as he deems appropriate.

As amended by section 304 of the Trade and Tariff Act of 1984 with respect to services, the President may also restrict the terms and conditions or deny the issuance of any access authorization (e.g., license, permit, order) to the U.S. market issued under Federal law, notwithstanding any other law governing the authorization. Such action can apply only prospectively to authorizations granted or applications pending on or after the date a section 301 petition is filed or the USTR initiates an investigation. Before the President imposes fees or other restrictions on services subject to Federal or State regulation, the USTR must consult as appropriate with the Federal or State agency concerned.

Action under section 301 may be taken on a nondiscriminatory basis or solely against the products or services of the country involved and with respect to any goods or sector regardless of whether they were involved in the particular act, policy, or practice.

The term "unjustifiable" refers to acts, policies, or practices which violate or are inconsistent with U.S. international legal rights, such as denial of national or most-favored-nation treatment, right of establishment, or protection of intellectual property rights. "Unreasonable" refers to acts, policies, or practices which are not necessarily illegal or inconsistent with U.S. international legal rights but are otherwise unfair and inequitable. The term "discriminatory" includes, where appropriate, any act, policy, or practice which denies national or most-favored-nation treatment to U.S. goods, services, or investment. The term "commerce" includes, but is not limited to, services (including transfers of information) associated with international trade, whether or not such services are related to specific products, and U.S. foreign direct investment with implications for trade in goods or services.

Petitions and investigations

Any interested person may file a petition under section 302 with the USTR requesting the President to take action under section 301 and setting forth the allegations in support of the request. The USTR reviews the allegations and must determine within 45 days after receipt of the petition whether to initiate an investigation. The USTR may also self-initiate an investigation in order to advise the President on the exercise of section 301 authority, after consulting with appropriate private sector advisory committees. Public notice of determinations is required, and in the case of decisions to initiate, publication of a summary of the petition and an opportunity for the presentation of views, including a public hearing if timely requested by the petitioner or any interested person.

Section 303 requires use of international procedures for resolving the issues to proceed in parallel with the domestic investigation. The USTR, on the same day as the determination to initiate an investigation, must request consultations with the foreign country concerned regarding the issues raised in the petition. As amended by the 1984 Act, the USTR may delay the request for up to 90 days in order to verify or improve the petition to ensure an adequate basis for consultation.

If the issues are covered by a trade agreement and are not resolved during the consultation period, if any, specified in the agreement, then the USTR is required to promptly request formal dispute settlement under the agreement. The USTR must seek information and advice from the petitioner and from other appropriate private sector representatives in preparing presentations by the United States in the consultation and dispute settlement proceedings.

USTR recommendations and Presidential action

Section 304 sets forth specific time limits within which the USTR must make recommendations to the President, including specifically what action, if any, the President should take under section 301 on the matters raised in the investigation. The recommendations are based on the investigation under section 302, and, if a trade agreement is involved, on the international consultations and, if applicable and timely concluded, the results of the dispute settlement proceedings under the agreement.

From the date of initiation of an investigation, the USTR is required to make a recommendation to the President

—within 7 months if the petition contains only allegations with respect to an export subsidy covered by the MTN Agreement on Subsidies and Countervailing Duties;

—within 8 months if the petition alleges a domestic subsidy or both export and domestic subsidies covered by the Agreement on Subsidies and Countervailing Duties;

—within 30 days after the dispute settlement procedure is concluded if the petition alleges a matter covered by an MTN trade agreement other than the Agreement on Subsidies and Countervailing Duties; or

—within 12 months in any other case.

The applicable deadline is postponed by up to 90 days if consultations with the foreign country involved were so delayed.

If a dispute is not resolved before the close of the minimum period provided for dispute settlement under an MTN agreement (other than the Agreement on Subsidies and Countervailing Duties), the USTR must submit a report to the Congress within 15 days thereafter setting forth the reasons the dispute was not resolved, the status of the dispute proceedings at the close of the minimum period, and the prospects for resolution, and any action contemplated.

The USTR must provide an opportunity for the presentation of views, including a public hearing if requested by an interested person, and to obtain advice from the appropriate private sector advisory representatives before recommending that the President take section 301 action. If expeditious action is required, the USTR must comply with these requirements after making the recommendation to the President. The USTR may request the views of the International Trade Commission on the probable economic impact of taking the action.

Section 301 requires the President to determine within 21 days of receiving the recommendation, what action, if any, he will take and publish notice of the determination. Section 301(c) also authorizes Presidential action in the absence of a petition when he determines it to be warranted. Self-initiated action must be preceded by public notice and, unless the President determines expeditious action is required, by an opportunity for the presentation of views.

Section 306 requires the USTR to keep each petitioner regularly informed of all determinations, recommendations, and developments regarding their case, including the reasons for any undue delays encountered in resolving the matter. The USTR also must submit a report to the Congress on a semiannual basis which summarizes the status of investigations and hearings conducted under section 301 during the preceding 6-month period.

Export performance requirements

Section 307 of the Trade and Tariff Act of 1984 provides new authority to the U.S. Trade Representative requiring him to seek the reduction and elimination of foreign export performance requirements through consultations and negotiations if he determines, with interagency advice, that U.S. action is appropriate to respond to such requirements that adversely affect U.S. economic interests. In addition, the USTR may impose duties or other import restrictions on the products or services of the country, including exclusion from entry of products subject to such requirements. The USTR may provide compensation for such action subject to the provisions of section 123 of the Trade Act of 1974 if necessary or appropriate under U.S. international obligations (for further discussion of section 123, see chapter 6). Section 307 applies only to prospective requirements not affecting existing U.S. foreign direct investments.

Summary of investigations under section 301 since January 1975

Petitions rejected [1]	5
Petitions withdrawn [1]	11
Cases terminated:	
Due to resolution of dispute	27
Due to other reasons	10
Cases resulting in retaliatory action	7
Cases in which President decided to retaliate, but retaliation was superseded by satisfactory resolution	2
Cases suspended:	
Indefinitely	2
Pending full implementation of agreement reached	2
Cases pending	14

[1] Some petitions withdrawn were later refiled and either accepted and remain pending cases or were rejected.

Source: Office of the U.S. Trade Representative.

Unfair Practices in Import Trade: Section 337 of the Tariff Act of 1930

Section 337 of the Tariff Act of 1930 [20] declares unlawful unfair methods of competition and unfair acts in the importation or sale of articles, the effect or tendency of which is (1) to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or (2) to prevent the establishment of such an industry, or (3) to restrain or monopolize trade and commerce in the United States. The International Trade Commission (ITC) is responsible for investigating alleged violations of section 337. Upon finding a violation, the ITC may issue an exclusion order, or a cease and desist order, subject to Presidential disapproval.

Section 337 is unique among the trade remedy laws in that it is the only one subject to the provisions of the Administrative Procedure Act (APA).[21] All ITC investigations and determinations under section 337 must be conducted on the record after publication of notice and opportunity for hearing in conformity with the APA.[22]

The language of section 337 closely parallels that of section 5 of the Federal Trade Commission Act,[23] and therefore the scope of section 337 has been compared to that of the antitrust and unfair competition statutes. The ITC has significant discretion in determining what practices are "unfair" under section 337. In practice, however, the overwhelming majority of cases dealt with under section 337 has been in the area of patent infringement. Among the few nonpatent cases have been cases involving group boycotts, price fixing, predatory pricing, false labeling, false advertising, and trademark infringement.

Whenever, in the course of a section 337 investigation, the ITC has reason to believe that the matter before it involves dumping or subsidization of imports within the purview of the antidumping or countervailing duty laws, it must notify the administering authority of those laws for appropriate action.[24] If the alleged violation of section 337 is based solely on such dumping or subsidization practices, the ITC must terminate (or not initiate) the section 337 investigation. If it is based in part on such practices, and in part on other alleged practices, then the ITC may continue (or initiate) an investigation under section 337. This provision is designed to avoid duplication and conflicts in the administration of the unfair trade practice laws.

Procedure

The ITC is required to investigate any alleged violation of section 337 on complaint under oath or upon its own initiative. The ITC must conclude its investigation and make its determination at the earliest practicable time within one year, except in more complicated cases which must be concluded within 18 months. In the course of each investigation, the ITC is required to consult with and seek advice and information from the Department of Health and

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[20] Public Law 71-361, sec. 337, approved June 17, 1930, 19 U.S.C. 1337.

[21] Act of June 11, 1946, ch. 324, sections 1-12, 5 U.S.C. 551 et seq.

[22] 19 U.S.C. 1337(c).

[23] Public Law 63-203, approved September 26, 1914, 38 Stat. 717, 15 U.S.C. 45.

[24] 19 U.S.C. 1337(b)(3).

Human Services, the Department of Justice, the Federal Trade Commission, and other appropriate departments and agencies.

If a violation of section 337 is found, the ITC must direct that the foreign articles be excluded from entry into the United States, unless it determines that such articles should not be excluded in consideration of the effect of exclusion on:

(a) the public health and welfare;

(b) competitive conditions in the U.S. economy;

(c) the production of like or directly competitive articles in the United States; and

(d) U.S. consumers.

In appropriate circumstances, the ITC may issue temporary exclusion orders during the course of an investigation if it determines that there is reason to believe that there is a violation of section 337. In the event of a temporary exclusion order, entry is to be permitted only under bond.

In lieu of issuing an exclusion order, the ITC may issue an appropriate cease and desist order to be served on the violating party or parties, unless it finds that such order should not be issued in consideration of the effect of such order on the same public interest factors listed above.

The ITC may at any time, upon such notice and in such manner as it deems proper, modify or revoke any cease and desist order, and issue an exclusion order in its place.

Any person who violates a cease and desist order issued under this section shall be subject to a civil penalty of up to the greater of $10,000 per day or the domestic value of the articles entered or sold on such day in violation of the order.

Presidential and judicial review

Following an ITC determination of a violation of section 337, the President may, within 60 days after receiving notification, disapprove the ITC determination for "policy reasons." The statute does not specify what types of policy reasons may provide the basis for disapproval. Upon Presidential disapproval, actions taken by the ITC cease to have effect. If the President does not disapprove the ITC determination, or if he approves it, then the ITC determination becomes final. Any person adversely affected by a final ITC determination under section 337 may appeal the determination to the U.S. Court of Appeals for the Federal Circuit.

Summary of cases under section 337 since January 1975

Cases completed	238
Cases terminated	161
On basis of withdrawn complaint	12
On the basis of a settlement agreement (includes settlement agreement, consent order, and/or license)	98
On the basis of a negative ITC determination (no violation)	63
Cases resulting in an exclusion order or a cease-and-desist order	65
Cases in which President overturns an ITC order for policy reasons	4

Source: International Trade Commission.

Fair Trade Laws

RELIEF FROM INJURIOUS INCREASED IMPORT COMPETITION: SECTIONS 201-203 OF THE TRADE ACT OF 1974

Sections 201-203 of the Trade Act of 1974 [25] as amended by sections 248 and 249 of the Trade and Tariff Act of 1984 [26] set forth the standard procedures and authorities for U.S. industries and workers to obtain temporary relief from injurious increased import competition.

From the outset of the trade agreements program in 1934, U.S. policy of seeking liberalization of trade barriers has been accompanied by recognition that difficult economic adjustment problems could result for particular sectors of the economy and that the possibility of serious injury to domestic industries by increased import competition should be minimized. Beginning with bilateral trade agreements in the early 1940's, U.S. law has contained a so-called "escape clause" provision for import relief which, while amended over the years, has basically provided authority for the President to withdraw or modify trade concessions and impose duties or other restrictions on imports of any article which causes or threatens serious injury to the domestic industry producing a like or directly competitive article, following an investigation and determination by the International Trade Commission (ITC).

Under his basic trade agreements authority in section 350 of the Tariff Act of 1930 the President issued three Executive orders setting forth procedures and criteria for escape-clause relief which governed from 1947 to 1951. Section 7 of the Trade Agreement Extension Act of 1951 contained the first statutory procedure and criteria for escape-clause action, which governed from 1951 until replaced by sections 301, 351 and 352 of the Trade Expansion Act of 1962. The 1962 provisions, which also introduced the concept of trade adjustment assistance (see separate section), were repealed and replaced by sections 201-203 of the Trade Act of 1974.

Primarily at U.S. insistence, an escape clause provision modeled after language in the 1947 Executive Order was included in the General Agreement on Tariffs and Trade (GATT) as Article XIX.[27] In order to restore and maintain the mutual balance of previously agreed GATT trade agreement obligations, countries adversely affected by import relief actions may make offsetting withdrawals or modifications of concessions, or the country taking the import relief action may seek agreement on new concessions as compensation (see chapter 6 on trade agreement authorities for description of U.S. law).

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[25] Public Law 93-618, approved January 3, 1975, 19 U.S.C. 2251.

[26] Public Law 98-573, approved October 30, 1984.

[27] The language of GATT Article XIX is as follows: "If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession."

Petitions and investigations (section 201)

An entity representative of an industry (including a trade association, firm, union or group of workers) may file a petition under section 201(a) of the Trade Act of 1974 with the ITC for import relief. The petition must state the purposes of seeking relief, such as facilitating orderly transfer of resources to alternative uses or other adjustment to new conditions of competition. Alternatively, the President, U.S. Trade Representative, or the House Committee on Ways and Means or Senate Committee on Finance may request an investigation.

Upon petition, request, or on its own motion, the ITC conducts an investigation under section 201(b) "to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article." Substantial cause is defined as "a cause which is important and not less than any other cause."

In making its determinations the Commission must take into account all relevant economic factors such as those enumerated in section 201(b), as amended by section 249 of the Trade and Tariff Act of 1984.[28] The Commission may determine to treat as the domestic industry: (1) only the domestic production of a producer which also imports; (2) only the portion or subdivision producing the like or directly competitive article of a producer of more than one article; and (3) only production concentrated in a major geographic area under certain circumstances.

A public hearing is required during the course of the investigation. Whenever during the investigation the Commission has reason to believe increased imports are attributable in part to unfair trade practices, then it must promptly notify the agency administering the appropriate remedial law.

If the Commission makes an affirmative injury determination, it must (1) find the amount of the increase in, or imposition of, any duty or other import restriction which is necessary to prevent or remedy the injury, or (2) if it finds that adjustment assistance can effectively remedy the injury, recommend the provision of such assistance.

The Commission must report to the President and publish the results of its investigation, including its findings on the injury question and any recommendations concerning relief, within 6 months after instituting the investigation. The report must also include information on efforts by workers and firms in the industry to compete more effectively with imports.

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[28] These factors include: with respect to serious injury, the significant idling of productive facilities (including plant closings or capacity underutilization) in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment within the industry;

with respect to threat of serious injury, a decline in sales, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry concerned; and

with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic producers. The presence or absence of any factor is not necessarily dispositive.

Unless the Commission determines good cause exists, it cannot investigate the same subject matter within one year after its report to the President on a previous investigation.

Presidential action (section 202)

If the Commission makes an affirmative injury determination, and recommends the provision of import relief (as opposed to adjustment assistance), section 202 requires the President within 60 days to determine what, if any, relief to provide. The President is required (1) to provide import relief unless he determines it is not in the national economic interest, and (2) to evaluate the extent to which adjustment assistance is available to workers and firms in the industry, and may direct expeditious consideration of petitions. If the Commission recommends adjustment assistance, the President must direct expeditious consideration of petitions.

In making this decision, the President must take into account various factors enumerated in sections 202(c) and 203(k)(2) and any other relevant considerations. These factors are of a broader nature than the injury to the particular domestic industry investigated by the Commission and concern the national economic consequences of providing or not providing relief.

Nature and timing of import relief (section 203)

Section 203 authorizes the President to provide import relief in the form of:

1. An increase in, or imposition of, tariffs (not exceeding a rate 50 percent above the existing duty level);
2. A tariff-rate quota;
3. Quantitative restrictions on imports;
4. Negotiation of orderly marketing agreements (OMA's); or
5. A combination of such actions.

Import restrictions may be imposed on a discriminatory basis, but only after considering U.S. international obligations, including the GATT most-favored-nation principle. Import relief measures must be proclaimed within 15 days after a decision to provide relief, or within 90 days in the case of a decision to negotiate OMA's.

On the same day the President determines import relief is not in the national economic interest or he decides to provide import relief, the President must report to the Congress his decision and the reasons therefor, including reasons for any difference in action taken from that recommended by the ITC. Under section 203(c) as amended by section 248 of the Trade and Tariff Act of 1984, Congress may adopt a joint resolution of disapproval within 90 legislative days under the expedited procedures of section 152 of the Trade Act if the President takes action which is different from that recommended by the Commission or if the President declines to take any action. Under these procedures, resolutions are referred to the House Committee on Ways and Means and the Senate Committee on Finance, which are subject to a motion to discharge if the resolution has not been reported within 30 legislative days. No amendments to the motion or to the resolution are in order. Within 30 days after enactment of such a resolution, the President must proclaim the relief recommended by the Commission.

The President may subsequently negotiate OMA's and suspend or terminate the original form of relief. Any quotas or OMA's must permit importation of a quantity or value of the article which is not less than that entered during the most recent representative period. In order to carry out an OMA with one or more countries accounting for a major part of U.S. imports, the President may regulate imports of like articles from countries not party to the agreement. If an OMA does not continue to be effective, the President may provide import relief.

An increase in duty may take the form of suspension of items 806.30 or 807.00 of the Tariff Schedules of the United States if the Commission determines in its investigation that the actual or threatened serious injury results from their application. Suspension of duty-free treatment under the Generalized System of Preferences (GSP) may also be treated as a tariff increase, but cannot be the sole form of relief unless the Commission determines in its investigation that the injury results from GSP treatment.

Relief is temporary in order to encourage adjustment of the industry to increased import competition. Relief may be provided initially for up to 5 years. To the extent feasible, any relief provided for more than 3 years must be phased down, the first reduction taking effect no later than the beginning of the fourth year. So long as the relief remains in effect, the Commission must keep under review developments in the industry and report them to the President upon his request.

If the industry petitions the Commission within 6 to 9 months prior to the expiration of the initial relief period for an extension, the Commission must advise the President of its judgment as to the probable economic effect on the industry of terminating relief. The Commission must hold a public hearing during its investigation. The President may extend relief for one period of up to 3 years at a level no greater than in effect immediately prior to the extension.

The President may reduce or terminate import relief at any time during the initial or extended period if he determines such action is in the national interest, after taking into account advice from the Commission on the probable economic effect on the industry and advice of the Secretaries of Commerce and Labor.

No new section 201 investigation can take place until 2 years after import relief has been in effect on the article.

Summary of investigations under section 201 since January 1975

Investigations completed	60
Negative ITC determinations	27
Affirmative or tied ITC determinations	33
Investigations in which President provided import relief other than trade adjustment assistance	12

Source: International Trade Commission.

RELIEF FROM MARKET DISRUPTION BY IMPORTS FROM COMMUNIST COUNTRIES: SECTION 406 OF THE TRADE ACT OF 1974

Section 406 was established under the Trade Act of 1974[29] to provide a remedy against market disruption caused by imports from Communist countries. The provision applies to imports from any Communist country, irrespective of whether it has in the past or currently receives nondiscriminatory most-favored-nation treatment. Enactment of section 406 resulted from concern that traditional remedies of unfair trade practices, such as the antidumping and countervailing duty laws, may be insufficient to deal with the disruptive impact on U.S. industry of a sudden and rapid influx of substantial imports that can result from Communist country control of their pricing levels and distribution process. The provisions of sections 201-203 of the Trade Act generally apply to section 406 cases, except that section 406 provides a lesser standard of injury causation and a faster relief procedure than under normal import relief procedures, as described below. The provision has not been amended since 1974.

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[29] Public Law 93-618, approved January 3, 1975, 19 U.S.C. 2436.

Under section 406(a), the International Trade Commission (ITC) conducts investigations to determine whether imports of an article produced in a Communist country are causing market disruption with respect to a domestically produced article. Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry. The term "Communist country" means any country dominated or controlled by communism.

The ITC conducts such investigations at the request of the President or the U.S. Trade Representative, upon resolution of either the House Committee on Ways and Means or the Senate Committee on Finance, on its own motion, or upon the filing of a petition by an entity (including a trade association, firm, union, or a group of workers) which is representative of an industry. The Commission must complete its investigation within 3 months including a public hearing.

If the ITC finds that market disruption exists, it must also recommend to the President relief in the form of rates of duty or quantitative restrictions that will prevent or remedy such market disruption. The President then has 60 days to advise Congress as to what, if any, relief he will proclaim. Any import relief must be proclaimed within 15 days after the determination to provide it, except that the President has an additional 60 days to negotiate an orderly marketing agreement if he decides to provide relief in that form. Relief applies only to imports from the subject Communist country. Relief is limited to a maximum 5-year period subject to one renewal of up to 3 years as in normal import relief cases.

Section 406(c) authorizes the President, prior to an ITC determination, to take temporary emergency action with respect to imports from a Communist country whenever he finds that there are reasonable grounds to believe there is market disruption. When taking such action, the President must also request the Commission to conduct an investigation under section 406(a). Any emergency relief ceases to apply on the day the Commission makes a negative finding or on the effective date of action by the President following an affirmative ITC finding.

Summary of investigations under section 406 since January 1975

Investigations completed	10
Negative ITC determinations	7
Affirmative or tied ITC determinations	3
Investigations in which President provided import relief	0

Source: International Trade Commission.

Trade Adjustment Assistance

The trade adjustment assistance (TAA) programs were first established under the Trade Expansion Act of 1962 [30] for the purpose of assisting in the special adjustment problems of workers and firms dislocated as a result of Federal policy to liberalize trade barriers. As a result of limited eligibility and usage of the programs, criteria and benefits were liberalized under title II of the Trade Act of 1974.[31] Extensive amendments in the worker program under title XXV of the Omnibus Budget Reconciliation Act of 1981 (OBRA),[32] particularly in program eligibility and benefits, were intended to reduce program cost significantly and to shift its focus from income compensation for temporary layoffs to return to work through training and other adjustment measures for the long-term or permanently unemployed. The OBRA also made relatively minor modifications in the firm program. Most amendments became effective on October 1, 1981. Both programs were extended at that time for 1 year, to terminate on September 30, 1983.

Public Law 98-120 (H.R. 3813 as amended by the Senate), approved on October 12, 1983, extended the worker and firm TAA programs for 2 years until September 30, 1985. Sections 2671-2673 of the Deficit Reduction Act of 1984 [33] included three provisions [34] amending the program for workers to increase the availability of worker training allowances and the level of job search and relocation benefits and the program for firms to increase the availability of industrywide technical assistance.

The termination date of the worker and firm TAA programs was further extended under temporary legislation in the first session of the 99th Congress (Public Laws 99-107, 99-155, 99-181, and 99-189) until December 19, 1985. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA),[35] approved April 7, 1986, reauthorized the worker and firm TAA programs, with amendments, for 6 years until September 30, 1991, with retroactive application to December 19, 1985.

TRADE ADJUSTMENT ASSISTANCE PROGRAM FOR WORKERS

Trade adjustment assistance for workers under sections 221 through 250 of the Trade Act of 1974, as amended, consists of trade readjustment allowances (TRA), employment services, training and extended TRA allowances while in training, and job search and relocation allowances for certified and otherwise qualified workers. The program is administered by the Employment and Training Administration (ETA) of the Department of Labor through State employment security agencies under cooperative agreements between each State and the Secretary of Labor. ETA processes petitions and issues certifications or denials of petitions by groups of workers for eligibility to apply for TAA. The State agencies act as Federal agents in processing applications and determining individual worker eligibility for benefits, issuing payments, and providing reemployment services and training opportunities.

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[30] Public Law 87-794, approved October 11, 1962.
[31] Public Law 93-618, approved January 3, 1975, 19 U.S.C. 2251.
[32] Public Law 97-35, title XXV, approved August 13, 1981, 19 U.S.C. 2272-2395.
[33] Public Law 98-369, approved July 18, 1984, 19 U.S.C. 2296.
[34] Sections 3, 6, and 8 of H.R. 3391 as passed by the House on September 15, 1983.
[35] Public Law 99-272, approved April 7, 1986.

Certification requirements

A two-step process is involved in the determination of whether an individual worker will receive trade adjustment assistance; (1) certification by the Secretary of Labor of a petitioning group of workers in a particular firm as eligible to apply; and (2) approval by the State agency administering the program of the application for benefits of an individual worker covered by a certification.

The process begins by a group of three or more workers, their union, or authorized representative filing a petition with the ETA for group eligibility. To certify a petitioning group of workers as eligible to apply for adjustment assistance, the Secretary must determine that three conditions are met:

1. A significant number or proportion of the workers in the firm or subdivision of the firm have been or are threatened to be totally or partially laid off;
2. Sales and/or production of the firm or subdivision have decreased absolutely; and
3. Increased imports of articles like or directly competitive with articles produced by the firm or subdivision of the firm have "contributed importantly" to both the layoffs and the decline in sales and/or production.

Eligibility requirements for trade readjustment allowances

In order to receive entitlement to a trade readjustment allowance for any week of unemployment, an individual worker covered by a certification must file an application with the State employment security office and meet the following eligibility requirements:

1. The worker's last total or partial layoff before application must have occurred not more than 1 year prior to the date of the petition, on or after the "impact date" (i.e., the date on which total or partial layoffs began or threatened to begin), within 2 years after the date the Secretary of Labor issued the certification covering the worker, and before the termination date (if any) of the certification; and
2. The worker was employed at least 26 of the 52 weeks preceding last layoff in adversely affected employment with a single firm or subdivision thereof at wages of $30 or more per week.

A week of employment includes the week in which layoff occurs and up to 7 weeks of employer-authorized vacation, sick, injury, maternity, or military leave, or service as a full time union representative. Weeks of disability covered by workmen's compensation may also count toward the 26 week minimum.

In addition, the OBRA amended the program to include the following TRA eligibility limitations:

1. Under the program prior to October 1, 1981, TRA benefits were a supplement to State unemployment insurance and paid concurrently during weeks the worker was eligible for UI. A fundamental change under the current program makes TRA benefits a continuation of the UI program by requiring the worker to exhaust all rights to UI, including any extended benefits (EB) or Federal supplemental compensation (FSC), to which the worker is entitled in the most recent benefit period before becoming eligible for any TRA payments. The worker is also ineligible for TRA benefits for any subsequent week of entitlement to payment for any further UI or waiting period credit.
2. All TRA claimants in all States are subject to the provisions of the EB "suitable work" test under section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970 after the end of their regular UI benefit period as a precondition for receiving any weeks of TRA payments. Workers are not disqualified for TRA benefits if in State-approved training prior to eligibility or for any form of TAA because of subsequently leaving employment which is not of a substantially equal or higher skill and wage level than previous employment.
3. Workers are entitled to TRA payments only for weeks of unemployment which begin more than 60 days after the filing date of the petition, i.e. after the statutory deadline for certification. Workers can continue to be certified for layoffs occurring up to 1 year prior to the petition filing date in order to qualify for other TAA benefits, but can no longer receive TRA payments retroactively beyond the date certification is supposed to take place.
4. No TRA payment can be made for a UI waiting week.

As an incentive to early reemployment, the 1986 amendments require, as a prerequisite for receiving TRA payments, that workers be enrolled in or have completed a job search program approved by the Secretary of Labor in order to receive TRA payments, unless the Secretary has determined that no acceptable job search program is reasonably available.

As a further encouragement to reemployment, the Secretary of Labor may require all workers in a labor market area with certain economic characteristics either to accept training or to extend job search beyond their labor market area after their first 8 weeks of TRA eligibility if they have been approved for training.

Benefit levels and duration

TRA benefits prior to October 1, 1981, were 70 percent of the worker's former gross weekly wage not to exceed the average weekly manufacturing wage, reduced by the amount of any unemployment compensation entitlement, 50 percent of any part-time earnings, and certain training allowances paid under Federal law. Eligible workers could collect basic benefits for up to 52 weeks of unemployment during a maximum 2-year period following layoff.

The following major changes under the OBRA, effective as of October 1, 1981, reduced program costs and were intended to remove reemployment disincentives associated with the previous high net wage replacement and the inequity in benefit amounts between import-impacted workers and workers laid off for other reasons:

1. The TRA weekly benefit amount is the same as, and a continuation of, the claimant's unemployment insurance weekly benefit amount during the most recent UI benefit period, reduced by any training allowance and disqualifying income deductible under UI law. This change shifted the TRA benefit level from a uniform national standard to a State standard.
2. The total amount of basic TRA benefits payable to a worker is a maximum of 52 times the TRA allowance level for a week of total unemployment minus the total amount of UI benefits payable in the worker's most recent benefit period (e.g., a worker receiving 39 weeks of UI regular and extended benefits could receive a maximum 13 weeks of TRA benefits). UI and TRA payments combined are limited to a maximum 52 weeks in all cases involving extended benefits. As amended by the COBRA, TRA basic benefits may be collected only during the 104-week period (compared to 52-week period under the OBRA) following the week in which the worker has exhausted all rights to regular unemployment compensation in the most recent benefit period. The purpose of the shortened collection period was to reduce payment of TRA benefits during periods of non-trade-related unemployment.
3. Workers may receive up to 26 additional weeks of TRA benefits to assist in completing approved training, if the worker applies for the training program within 210 days after certification or layoff, whichever date is later. The additional benefits may be collected only during the 26-week period following the worker's last week of entitlement to basic TRA benefits. As amended in 1984, if training has not been approved until after the last week of entitlement to basic TRA, the 26-week collection period begins with the first week of training.

Workers cannot receive a TRA payment for any week during which they receive on-the-job training.

Training and other employment services, job search and relocation allowances

Training and other employment services and job search and relocation allowances are available through State agencies to certified workers whether or not they have exhausted UI benefits and become eligible for TRA payments.

Employment services consist of counseling, vocational testing, job search and placement, and other supportive services, as appropriate.

Training, preferably on-the-job, shall (to the extent appropriated funds are available) be approved for a worker if the following five conditions are met: (1) there is no suitable employment available; (2) the worker would benefit from appropriate training; (3) there is a reasonable expectation of employment following training completion; (4) approved training is available from government agencies or private sources; and (5) the worker is qualified to undertake and complete such training. While training itself is not an entitlement, if training is approved, a worker is entitled to payment of the costs, unless they have been paid or are reimbursable under other Federal law. As a result, the Department of Labor prohibits State agencies from approving training if sufficient funds have not been appropriated and allocated to pay the costs. On-the-job training costs are payable only if such training is not at the expense of currently employed workers.

Supplemental assistance is available to defray reasonable transportation and subsistence expenses for separate maintenance when training is not within the worker's commuting distance, equal to the lesser of actual per diem expenses or 50 percent of the prevailing Federal per diem rate for subsistence and prevailing mileage rates under Federal regulations for travel expenses.

Job search allowances are available to certified workers who cannot obtain suitable employment within their commuting area, are totally laid off, and who apply within 1 year after certification or last total layoff, whichever is later, or within 6 months after concluding training. As amended in 1981 and 1984, the allowance for reimbursement is equal to 90 percent of necessary job search expenses, based on the same increased supplemental assistance rates described above, up to a maximum amount of $800.

The COBRA amendments require the Secretary to reimburse workers for necessary expenses incurred to participate in an approved job search program.

Relocation allowances are available to certified workers totally laid off at time of relocation who have been able to obtain an offer of or actual suitable employment only outside their commuting area, who apply within 14 months after certification or last total layoff, whichever is later, or within 6 months after concluding training, and whose relocation takes place within 6 months after application or completion of training. As amended in 1981 and 1984, the allowance is equal to 90 percent of reasonable and necessary expenses for transporting the worker, family, and household effects, based on the same increased supplemental assistance rates described above, plus a lump sum payment of three times the worker's average weekly wage up to a maximum amount of $800.

Funding

Federal funds, as an entitlement from general revenues under the Federal Unemployment Benefits Account (FUBA) in the Department of Labor, cover only the portion of the worker's total entitlement represented by the continuation of UI benefit levels in the form of TRA payments, plus the salaries and expenses for ETA personnel administering the program. Funds made available under grants to States defray expenses of any employment services. Funding for training, job search and relocation allowances and related expenses is subject to annual appropriations for the Department of Labor.

The States are reimbursed from Treasury general revenues for benefit payments and other costs incurred under the program. A penalty under section 239 of the Trade Act of 1974 provides for reduction by 15 percent of the credits for State unemployment taxes which employers are allowed against their liability for Federal unemployment tax if a State has not entered into or has not fulfilled its commitments under a cooperative agreement.

TRADE ADJUSTMENT ASSISTANCE PROGRAM FOR FIRMS

Sections 251 through 264 of the Trade Act of 1974, as amended, contain the procedures, eligibility requirements, benefits and their terms and conditions, and administrative provisions of the trade adjustment assistance program for firms adversely affected by increased import competition. Administration of the program was transferred in 1982 within the Department of Commerce from the Economic Development Administration to the International Trade Administration. Amendments under the COBRA eliminated financial assistance benefits, increased government participation in technical assistance, and expanded the criteria for firm certification.

Program benefits now consist of technical assistance for petitioning firms which qualify under a two-step procedure: (1) certification by the Secretary of Commerce that the petitioning firm is eligible to apply, and (2) approval by the Secretary of Commerce of the application by a certified firm for benefits, including the firm's proposal for economic adjustment.

To certify a firm as eligible to apply for adjustment assistance, the Secretary must determine that three conditions are met:

1. A significant number or proportion of the workers in the firm have been or are threatened to be totally or partially laid off;
2. Sales and/or production of the firm have decreased absolutely, or sales and/or production that accounted for at least 25 percent of total production or sales of the firm during the 12 months preceding the most recent 12-month period for which data are available have decreased absolutely; and
3. Increased imports of articles like or directly competitive with articles produced by the firm have "contributed importantly" to both the layoffs and the decline in sales and/or production.

A certified firm may file an application with the Secretary of Commerce for trade adjustment assistance benefits at any time within 2 years after the date of the certification of eligibility. The application must include a proposal by the firm for its economic adjustment. The Secretary may furnish technical assistance to the firm in preparing its petition for certification and/or in developing a viable economic adjustment proposal.

The Secretary approves the firm's application for assistance only if he determines that its adjustment proposal (a) is reasonably calculated to make a material contribution to the economic adjustment of the firm; (b) gives adequate consideration to the interests of the workers in the firm; and (c) demonstrates that the firm will make all reasonable efforts to use its own resources for economic development.

Benefits

Technical assistance may be given to implement the firm's economic adjustment proposal in addition to, or in lieu of, precertification assistance or assistance in developing the proposal. It may be furnished through existing government agencies or through private individuals, firms, and institutions (including private consulting services), or by grants to intermediary organizations, including regional Trade Adjustment Assistance Centers. As amended by the COBRA, the Federal Government may bear the full cost of technical assistance to a firm in preparing its petition for certification. However, the Federal share cannot exceed 75 percent of the cost of assistance furnished through private individuals, firms, or institutions for developing or implementing an economic adjustment proposal. Grants may be made to intermediate organizations to defray up to 100 percent of their administrative expenses in providing technical assistance.

As amended in 1984, the Secretary of Commerce also may provide technical assistance of up to $10 millon annually per industry to establish industrywide programs for new product or process development, export development, or other uses consistent with adjustment assistance objectives. The assistance may be furnished through existing agencies, private individuals, firms, universities, and institutions, and by grants, contracts, or cooperative agreements to associations, unions, or other nonprofit organizations of industries in which a substantial number of firms or workers have been certified.

Funding

Funds to cover all costs of the program are subject to annual appropriations to the International Trade Administration of the Department of Commerce from general revenues.

Chapter 3: OTHER LAWS REGULATING IMPORTS

Authority To Negotiate Agreements Limiting Imports of Agricultural and Textile Products: Section 204 of the Agricultural Act of 1956

Section 204 of the Agricultural Act of 1956, as amended,[1] authorizes the President to negotiate agreements with foreign governments to limit their exports of agricultural or textile products to the United States. The President is authorized to issue regulations governing the entry of products subject to international agreements concluded under this section. Furthermore, if a multilateral agreement is concluded among countries accounting for a significant part of world trade in the articles concerned, the President may also issue regulations governing entry of those same articles from countries which are not parties to the multilateral agreement.

The authority provided under section 204 has been used to negotiate bilateral agreements restricting the exportation of certain meats to the United States,[2] as well as to implement an agreement with the European Communities (EC) restricting U.S. importation of certain cheeses from the EC.[3] Section 204 also provides the legal basis for the GATT Arrangement Regarding International Trade in Textiles, commonly referred to as the Multifiber Arrangement,[4] and for U.S. bilateral agreements with 39 textile-exporting nations.

MULTIFIBER ARRANGEMENT (MFA)

The Multifiber Arrangement (MFA) is a multilateral agreement negotiated under the auspices of the GATT. The MFA provides a general framework and guiding principles for the negotiation of bilateral agreements between textile importing and exporting countries, or for unilateral action by an importing country if an agreement cannot be reached. In effect since 1974, the MFA was established to deal with problems of market disruption in textile trade, while permitting developing countries to share in expanded export opportunities.

Background

The first voluntary agreement to limit exports of cotton textiles to the United States was negotiated with Japan in 1957. Through the 1950's cotton textile imports, especially from Japan, continued to increase and generate pressure for import restraints. In 1956, the Congress passed the Agricultural Act of 1956 which, among other things, provided negotiating authority for agreements restricting imports of textile products. Pursuant to this authority, the United States negotiated a 5-year voluntary restraint agreement on cotton textile exports from Japan, announced in January 1957.

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[1] Public Law 84-540, ch. 327, approved May 28, 1956, 70 Stat. 200, as amended by Public Law 87-488, approved June 19, 1962, 76 Stat. 104, 7 U.S.C. 1854.

[2] Exec. Order No. 11539, June 30, 1970, 35 Fed. Reg. 10733, as amended by Exec. Order No. 12188, Jan. 2, 1980, 45 Fed. Reg. 989. See discussion of Meat Import Act of 1979, infra.

[3] Exec. Order No. 11851, April 10, 1975, 40 Fed. Reg. 16645.

[4] Arrangement Regarding International Trade in Textiles, T.I.A.S. 7840 (1973) (expires 1986).

As textile and apparel imports from low-wage developing countries began to rise, pressure mounted for a more comprehensive approach to the import problem. On May 2, 1961, President Kennedy announced a Seven Point Textile Program, one point of which called for an international conference of textile importing and exporting countries to develop an international agreement governing textile trade. On July 17, 1961, a textile conference was convened under the auspices of the GATT. The discussions culminated in the promulgation of the Short-Term Arrangement on Cotton Textile Trade (STA) on July 21, 1961.[5] The STA covered the year October 1, 1961, to September 30, 1962, and established a GATT Cotton Textiles Committee to negotiate a long-range cotton textile agreement.

From October 1961 through February 1962, the STA signatories met in Geneva and negotiated a Long-Term Arrangement for Cotton Textile Trade (LTA), to last for 5 years beginning October 1, 1962.[6] The LTA provided for negotiation of bilateral agreements between cotton textile importing and exporting countries, and for imposition of quantitative restraints on particular categories of cotton textile products from particular countries when there was evidence of market disruption. In June of 1962, section 204 of the Agricultural Act of 1956 was amended to give the President authority to control imports from countries which did not sign the LTA.[7]

In the fall of 1965 the LTA was reviewed, and criticism within the U.S. textile industry mounted with respect to the LTA's failure to cover man-made fiber textiles. In 1967, however, the LTA was extended for 3 additional years with no additional fiber coverage. In 1970, the LTA was again extended for 3 more years.

Meanwhile, the approach of negotiating multifiber agreements limiting imports not only of cotton but also of wool and man-made fiber textiles was used by the Nixon administration on a bilateral basis. On October 15, 1971, bilateral multifiber agreements were announced with Japan, Hong Kong, South Korea, and Taiwan. A multilateral agreement, incorporating the provisions of the bilaterals with Hong Kong, South Korea, and Taiwan, was also signed to allow the United States the authority, under section 204 of the Agricultural Act of 1956 as amended in 1962, to impose quantitative restrictions unilaterally on non-signatory countries.

The following year, in June 1972, efforts to negotiate a multifiber agreement on a broader multilateral basis led to the establishment of a GATT working party to conduct a comprehensive study of conditions of world trade in textiles. The working group submitted its study to the GATT Council early in 1973. In the fall of that year, multilateral negotiations for a multifiber agreement began after passage of a 3-month extension of the LTA. The first Multifiber Arrangement (MFA I) was concluded on December 20, 1973, and came into force January 1, 1974.

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[5] T.I.A.S. 4884 (1961) (expired 1962).

[6] T.I.A.S. 5240 (1962) (expired 1973).

[7] Public Law 87-488, approved June 19, 1962,76 Stat. 104.

MFA provisions

The MFA was modeled after the LTA and provides for bilateral agreements between textile importing and exporting nations (Article 4) and for unilateral actions following a finding of market disruption (Article 3).[8] Quantitative restrictions are to be based on past volumes of trade, with the right, within certain limits, to transfer the quota amounts between products and between years. The MFA also provides generally for a minimum annual growth rate of 6 percent.[9] Quotas already in place had to be conformed to the MFA or abolished within a year. The products covered by MFA I, II, and III included all manufactured products whose chief value is represented by cotton, wool, man-made fibers or a blend thereof. Also included were products whose chief weight is represented by cotton, wool, man-made fibers or a blend thereof. MFA IV expanded product coverage to include products made of vegetable fibers such as linen and ramie, and silk blends as well.

A Textile Surveillance Body (TSB) was established to supervise the implementation of the MFA. The TSB is composed of a chairman and eight members from among the MFA signatories chosen by the GATT Textiles Committee. The TSB receives notification of all actions taken and agreements concluded under the MFA, examines them for conformity with the MFA, discusses those in dispute with the principals involved, and offers, where appropriate, nonbinding recommendations to the governments involved. It reports at least annually to the GATT Textiles Committee.

MFA I was in effect for 4 years, until the end of 1977. During MFA renewal negotiations in July 1977 the EC succeeded in putting in the renewal protocol a provision allowing jointly agreed "reasonable departures" from the MFA requirements in negotiating bilateral agreements. The MFA was then renewed for 4 more years.[10]

MFA II was in effect through December 1981. On December 22, 1981, a protocol was initialed extending the MFA for an additional four and a half years, and providing a further interpretation of MFA requirements in light of 1981 conditions.[11] MFA III expired on July 31, 1986. MFA IV, currently in force, went into effect on August 1, 1986, and will expire on July 31, 1991.

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[8] Market disruption exists when domestic producers are suffering "serious damage" or the threat thereof. Factors to be considered in determining whether the domestic producers are seriously damaged include: turnover, market share, profit, export performance, employment, volume of disruptive and other imports, production, utilization of capacity, productivity, and investments. Such damage must be caused by a sharp, substantial increase of particular products from particular sources which are offered at prices substantially below those prevailing in the importing country.

[9] The annual growth rate applies to overall levels of imports from a particular supplier country. Higher or lower growth rates can apply to particular products, as long as the overall growth rate with respect to that supplier country is 6 percent.

[10] T.I.A.S. 8939 (1977).

[11] T.I.A.S. 10323 (1981).

BILATERAL TEXTILE AGREEMENTS

Under the authority of section 204 of the Agricultural Act of 1956, as amended, and in conformity with the MFA, the President has negotiated bilateral agreements restricting textile exports from various supplier countries. There are 39 such bilateral agreements currently in force plus an additional 4 bilateral agreements providing for consultation procedures. The agreements apply to textile products, covering not only fiber and fabric, but apparel as well.

The terms of each bilateral agreement are worked out through negotiation. The life of an agreement ranges from 3 to 6 years. Each agreement contains flexible, specific, and/or aggregate limits with respect to the type and volume of textile products that the supplier country can export to the United States. Limits are set in terms of square yard equivalents (SYE's). The MFA allows, under certain conditions, for carryover (from the prior year to current year within the same product category), carryforward (from the subsequent year to the current year within the same product category), and swing (from one product category to another product category within the same year) of unused portions of quotas. These provisions may be applied only with respect to specific import limits set forth in the bilateral agreement. Each agreement also provides for adjustment of import levels in accordance with specified growth rates. Some of the bilaterals provide for an export control system to be administered by the exporting country to assure compliance with the terms of the agreement.

Consultation levels apply to categories which do not have specific limits. Once imports in a particular category reach the consultation level, the U.S. Government requests or "calls" for consultations to control imports in that product category. If consultations fail to produce an agreement on restrictive levels, and the United States is able to demonstrate that such imports are causing market disruption, then the United States may take unilateral action, such as an embargo, to restrict further imports in that product category.

The Committee for Implementation of Textile Agreements (CITA) is responsible for administering the bilateral textile agreements program.[12] CITA is composed of representatives from the Departments of Commerce, State, Labor, and Treasury, and the Office of the U.S. Trade Representative. The Commerce Department official is chair of the committee, and heads the Office of Textiles and Apparel (OTEXA) in the Department of Commerce which implements the terms of the agreements and decisions made by CITA. A primary function of CITA is to monitor imports and to determine when calls for consultations are to be made.

Fees and Quotas Under Section 22 of the Agricultural Adjustment Act of 1933

Section 22 of the Agricultural Adjustment Act of 1933, as amended,[13] authorizes the President to impose fees or quotas on imported products that undermine any U.S. Department of Agriculture (USDA) domestic commodity program. This authority, which has existed in some form since 1935,[14] is designed to prevent imports from interfering with USDA efforts to stabilize or raise domestic agricultural commodity prices.

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[12] Exec. Order 11651, 3 CFR 676 (1971-75 Comp.).

[13] Act of May 12, 1933, ch. 25, title I, 48 Stat. 31, as amended by Public Law 74-320, section 31, 49 Stat. 773, 7 U.S.C. 624.

The protection of farm income has long been considered essential to assure the Nation balanced and adequate supplies of food and fiber. A fundamental element of U.S. agricultural policy, therefore, has been the stabilization and support of farm prices. The Congress has mandated minimum support prices for some of the major storage farm commodities; discretionary support authority exists for other commodities; and in other cases, particularly for perishable products, growers are authorized to regulate marketing in their product sectors.

When world commodity prices are lower than domestic support prices, imports may enter the U.S. market in increasing quantities, and undercut domestic support prices. Consequently, either the USDA must remove larger quantities from the market or farmers must make sharper cuts in production. The negative effect that imports can have on the USDA's commodity price support programs provided the basis for enactment of import control authority in 1935. Section 31 of the Act of August 24, 1935 added section 22 to the Agricultural Adjustment Act of 1933. Since its enactment in 1935 section 22 has been amended numerous times, the last time by the Act of August 7, 1953.

BASIC PROVISIONS

Under section 22, the Secretary of Agriculture is directed to advise the President when the Secretary has reason to believe that imports of any article "render or tend to render ineffective, or materially interfere with" any USDA price support or similar agricultural program, or "reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof" which is the subject of an agricultural program. Such determination is usually based on USDA activities in monitoring imports, although private parties can request the Secretary to take action pursuant to this section.

If the President agrees that there is reason for such belief, he must order an investigation of the situation by the International Trade Commission (ITC). The ITC must give precedence to such investigation, and report its findings along with recommendations for action to the President.

Based on the ITC report, the President must determine whether the conditions specified in the statute exist. If the President makes an affirmative determination, he is required to impose, by proclamation, either import fees or import quotas sufficient to prevent imports of that product from harming or interfering with the relevant price support program. Any import fee imposed, however, may not exceed 50 percent ad valorem. Any import quota imposed may not exceed 50 percent of the quantity imported during a representative period, as determined by the President. These ceilings are statutorily set, and may not be exceeded even if, after imposition of fees or quotas, imports continue to enter the United States in such quantities as to interfere with any agricultural program. In designating the articles subject to such a fee or quota, the President may describe them by physical qualities, value, use, or any other basis.

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[14] Section 22 was added by section 31 of the Act of August 24, 1935, Public Law 74-320, 49 Stat. 773.

If the Secretary of Agriculture determines and reports to the President that emergency action is needed, the President may take immediate interim action without awaiting a report by the ITC. Such interim action will continue in effect until the President acts on the ITC report.

Any decision of the President as to facts under section 22 is final. The President may modify, suspend, or terminate any fees or quotas imposed after an ITC investigation and report and a Presidential determination that changed circumstances require modification, suspension or termination.

RELATIONSHIP TO INTERNATIONAL AGREEMENTS AND OTHER LAWS

The provisions of section 22 supersede any inconsistent provisions of international agreements entered into by the United States.[15] The use of section 22 quotas is inconsistent with Articles II and XI of the GATT. (Article II prohibits unequal treatment of trading partners, and Article XI forbids the use of quantitative import restrictions). To remedy the inconsistency between section 22 and the GATT, the United States sought and received a waiver of the provisions of Articles II and XI in 1955.[16]

Fees and quotas established under section 22 are not affected by duty-free status granted under the Generalized System of Preferences or the Caribbean Basin Initiative. There are no provisions under section 22 for exclusion or preference of products from specific countries. Quotas imposed under the section, however, are usually allocated among supplying countries in accordance with each country's proportionate market share during a previous representative period.

APPLICATION

Since its enactment in 1935, section 22 has been used to impose import controls on 12 different commodities or groups of commodities: (1) wheat and wheat flour; (2) rye, rye flour, and rye meal; (3) barley, hulled or unhulled, including rolled, ground, and barley malt; (4) oats, hulled or unhulled, and unhulled ground oats; (5) cotton, certain cotton wastes, and cotton products; (6) certain dairy products; (7) shelled almonds; (8) shelled filberts; (9) peanuts and peanut oil; (10) tung nuts and tung oil; (11) flaxseed and linseed oil; and (12) sugars and sirups. Section 22 fees and quotas have since been terminated for most of these commodities. At the current time, however, import controls are in place to protect cotton, certain dairy products, peanuts, and sugar. The fees and quotas applicable to imported products under section 22 are specified in part 3 of the Appendix to the Tariff Schedules of the United States.

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[15] 7 U.S.C. 624(f).

[16] Decision of 5 March 1955 as reported in the Basic Instruments and Selected Documents, Third Supplement, General Agreement on Tariffs and Trade, Geneva, June 1955.

Sugar Quotas Under Headnote Authorities

Headnote authority under subpart A of Part 10 of Schedule 1 of the Tariff Schedules of the United States (TSUS) provides the authority to establish an annual quota for imports of sugars, syrups and molasses described in TSUS Items 155.20 and 155.30.[17] This headnote authority was added to the TSUS in 1967 [18] to carry out a provision in the Geneva (1967) Protocol of the General Agreement on Tariffs and Trade containing the results of the Kennedy Round of Multilateral Trade Negotiations.[19]

Background

The United States has historically imported between 33 and 55 percent of its sugar needs, making it one of the world's largest sugar importers. At the same time, it has been this nation's policy to maintain its own sugar industry, even when world prices are substantially below production costs in the United States. A quota on sugar imports (including syrups and molasses) has been a common characteristic of U.S. sugar policy since 1934.

Sugar quota authority was first contained in sugar price support legislation in 1934. The Jones-Costigan Act of 1934 [20] imposed a quota on sugar imports partly in response to the failure of high tariffs to solve the domestic sugar problem. The Sugar Act of 1937 [21] renewed and revised the sugar program and this legislation continued to be extended until being replaced by the Sugar Act of 1948.[22] The 1948 legislation was amended and repeatedly extended until, failing renewal, it expired in 1973.

Authority to impose and to modify sugar quotas was classified in the TSUS in 1967.

Application

The headnote authority under subpart A was used to impose a restrictive quota on sugar imports by President Reagan on May 5, 1982.[23] The quota is allocated on a country-by-country basis among supplying countries in accordance with their historic shares of the U.S. market. [24] In order to facilitate the orderly importation of sugar during the quota year, a certificate of eligibility system has been established which permits sugar from participating countries to enter the United States only if such imports are accompanied by certificates of eligibility.[26]

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[17] Sugar imported for refining and reexportation, or for use in the production of polyhydric alcohols, is exempt from the quota. Pres. Proc. 5002, Nov. 30, 1982, 47 Fed. Reg. 54269, 48 Fed. Reg. 29824.

[18] Pres. Proc. 3822, Dec. 16, 1967, 82 Stat. 1455.

[19] Note 1 of Unit A, Chapter 10, Part 1 of Schedule XX; 19 U.S.T., Part II, 1282.

[20] Public Law 73-213, ch. 263, approved May 9, 1934, 7 U.S.C. 608-620.

[21] Public Law 75-414, ch. 898, approved September 1, 1937, 7 U.S.C. 1100-1137.

[22] Public Law 80-388, ch. 519, approved August 8, 1948, 7 U.S.C. 1100-1160.

[23] Pres. Proc. 4941, May 5, 1982, 47 Fed. Reg. 34777.

[24] The allocation is determined by taking the average of each country's sugar exports to the United States between 1975 and 1981, subtracting the highest and lowest levels, and computing this as a percent of the total quota.

[25] [Footnote omitted.]

[26] See Pres. Proc. 4941, May 5, 1982, 47 Fed. Reg. 34777.

The quota for calendar year 1987 was announced on December 15, 1986, and is set at just over 1 million tons. The 1987 quota represents a 41 percent decline from the 1986 quota of just over 1.7 million tons. According to Secretary of Agriculture Richard Lyng, the sharp reduction in the 1987 sugar quota is the result of a continued increase in domestic sweetener production (including corn sweeteners), a decline in domestic consumption of cane and beet sugar, and the no-net-cost requirement of the Food Security Act of 1985 with respect to the domestic sugar price support program. The 1987 import quota of 1 million tons is the lowest level in nearly 100 years of sugar imports. The quota is allocated among supplier countries as follows:

SUGAR QUOTA ALLOCATIONS BY COUNTRY, CALENDAR YEAR 1987

Country	Percentage share	Short tons, raw value
Dominican Republic	17.6	160,160
Philippines	15.8	143,780
Brazil	14.5	131,950
Australia	8.3	75,530
Guatemala	4.8	43,680
Argentina	4.3	39,130
Peru	4.1	37,310
Panama	2.9	26,390
El Salvador	12.6	26,020
Fiji [2]	0.7	25,190
Colombia	2.4	21,840
Costa Rica	11.5	17,583
Honduras	11.0	15,917
Swaziland	1.6	14,560
Thailand	1.4	12,740
Mozambique	1.3	11,830
Guyana	1.2	10,920
Taiwan	1.2	10,920
Zimbabwe [2]	1.2	10,920
Mauritius	1.1	10,920
Belize	1.1	10,010
Canada	1.1	10,010
Ecuador	1.1	10,010
Jamaica	1.1	10,010
Malawi [2]	0.7	9,100
Other specified countries and areas (including Barbados, Bolivia, Congo, Gabon, Haiti, India, Cote D'Ivoire, Madagascar, Mexico, Papua New Guinea, Paraguay, St. Christopher, Trinidad-Tobago, and Uruguay) (each)	0.8 or less	7,500
Total	100.0	1,001,430

[1] The quota tonnages for El Salvador, Costa Rica, and Honduras have been increased to account for reallocations of the sugar quota previously allocated to Nicaragua.

[2] The quota tonnages for Fiji, Zimbabwe, and Malawi have been increased to correct statistical errors made in the calculation of their percentage shares.

Source: Dec. 15, 1986, press releases of U.S. Department of Agriculture and U.S. Trade Representative.

Meat Import Act of 1979

The Meat Import Act of 1979 [27] requires the President to impose quotas on imports of beef, veal, mutton, and goat meat when the aggregate quantity of such imports on an annual basis is expected to exceed a prescribed trigger level. The predecessor statute of the Meat Import Act of 1979 was the Meat Import Act of 1964,[28] which provided similar authority to the President to impose quotas on meat imports, based on a different formula.

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[27] Public Law 96-177, approved December 31, 1979, 93 Stat. 1291, 19 U.S.C. 1202.

Background

In 1964, the U.S. cattle industry was facing depressed economic conditions, and sought relief from increasing import competition. The Johnson Administration that year negotiated voluntary restraint agreements with Australia, New Zealand, Ireland and Mexico with respect to their exports of meat to the United States. Pressure for import quotas continued, however, and during the summer of 1964, the Meat Import Act of 1964 was passed by Congress and signed by President Johnson.

The Meat Import Act of 1964 required the President to impose quotas on imports of meat from cattle, goats and sheep whenever the Secretary of Agriculture determined that, without quotas, imports would equal or exceed a specified trigger level. The trigger was based on the average annual level of meat imports between 1959 and 1963, plus 10 percent, adjusted upward by the percentage increase, or downward by the percentage decrease, in domestic commercial production of these meats since the 1959–63 period. The President could suspend or raise the quotas, however, for overriding economic or national security interests, or for reasons of inadequate domestic supply.

The provisions of the 1964 law were expected to help raise domestic meat prices and thus help revive the domestic cattle industry. In the years following enactment, however, domestic cattle prices remained low.[29] Moreover, until 1976 no quotas were imposed on meat imports. During many years the level of expected meat imports for that year fell below the trigger level. During other years, the Federal Government either negotiated voluntary restraint agreements with foreign suppliers, or suspended the required quotas simultaneously with their proclamation due to "overriding economic interests." In October of 1976 a quota was imposed on meat from Canada, but the quota was terminated at the end of that same year.

By the late 1970's, U.S. livestock producers had stepped up efforts to strengthen the 1964 law. These efforts culminated in the passage of the Meat Import Act of 1979. Congress passed the Act on December 18, 1979, and December 31, 1979, President Carter signed it into law.

Basic provisions

The Meat Import Act of 1979 requires the President to impose a quota on imports of beef, veal, mutton, and goat meat [30] when the aggregate quantity of such imports is expected to exceed a prescribed countercyclical adjusted based quantity by 10 percent or more, on an annual basis. The trigger level, setting off quotas, is thus 110 percent of the adjusted base quantity. The statute sets the base quantity at 1,204,600,000 pounds, to be adjusted by a countercyclical formula which allows more imports when domestic supplies are low, and less imports when domestic supplies are abundant. The formula multiplies the base quantity by the ratio of average annual per capita production of domestic cow beef during the current and the previous four calendar years to average annual per capita production of domestic cow beef in the current and immediately preceding calendar year.

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[28] Public Law 88–482, approved August 22, 1964.

[29] By the early 1970's farm prices for beef improved for a short time, but profits were again depressed after 1973 by overexpansion, rising production costs, and a decline in domestic consumption.

[30] Classified under TSUS Items 106.10, 106.22, 106.25, 107.55, and 107.62.

The Secretary of Agriculture is responsible for making annual estimates, to be revised on a quarterly basis, of the countercyclical adjusted base quantity and of expected meat imports. When expected annual imports reach the trigger level, the President is required to impose a quota set at 110 percent of the countercyclical adjusted base quantity. The statute further provides, however, for a minimum access floor of 1.25 billion pounds annually, so that import quotas may never be less than 1.25 billion pounds.

Any quota imposed must be allocated among supplying countries on the basis of their historic shares of the U.S. market, and would cover all articles included in the calculation of the countercyclical adjusted base quantity.

A quota imposed under this Act may be suspended or raised by the President if, after giving notice and providing opportunity for comment, he determines one of the following:

(1) suspension or increase is required by overriding economic or national security interests of the United States;

(2) domestic supply of such meat will be inadequate to meet domestic demand at reasonable prices; or

(3) trade agreements entered into force after date of enactment ensure that policy set forth will be carried out.

Additional conditions must be met prior to suspension or increase if the cattle cycle at that time is in the herd liquidation phase and domestic beef production is relatively high.

Application

No quota has yet been imposed under the Meat Import Act of 1979. In 1980 and 1981 imports remained under the trigger level. In 1982 and 1983 imports threatened to exceed the annual triggers of 1.3 billion and 1.231 billion pounds respectively, however, voluntary restraint agreements were negotiated limiting imports from Australia, New Zealand and Canada thereby avoiding imposition of quotas. Meat imports in 1984, 1985, and 1986 did not reach the trigger levels of 1.228 billion pounds, 1.32 billion pounds, and 1.44 billion pounds, respectively. The trigger level for 1987 is 1.44 billion pounds.

International Commodity Agreements

International commodity agreements are multilateral agreements signed by producing and consuming countries, the purpose of which is to stabilize price and supply of an internationally traded primary commodity (agricultural or mineral) and closely related products. These agreements are generally entered into due to the extreme price fluctuations characterizing trade in certain commodities, as a result of periodic adverse weather conditions, economic cycles, or other causes. The agreements generally include provisions on buffer stocks, export-import controls, price setting, and long term contracts. A central organization administers the agreement for its members. The United States is currently a party to three international agreements, covering coffee, sugar and rubber.[31]

INTERNATIONAL COFFEE AGREEMENT

Representatives of the U.S. Government signed the fourth International Coffee Agreement (ICA) on March 23, 1983. This agreement, which entered into force provisionally on October 1, 1983, was the fourth in a series of coffee agreements and will run for 6 years, until 1989. Earlier agreements had been negotiated in 1962, 1968, and in 1976. The 1983 agreement was signed by 73 countries representing 95 percent of the exporting nations and 90 percent of the importing nations by volume of trade. The Senate unanimously ratified this treaty in July 1983 [32] and in September 1983 Congress passed implementing legislation.[33]

The objective of the ICA is to stabilize the price of coffee within a range that is acceptable to both consumers and producers. The method used to stabilize these prices is a system of country export quotas which are decreased when prices are declining and increased when prices are within an agreed range. In periods of high prices, quotas are suspended altogether in order to encourage maximum exports. The quota system is enforced by the importing members. The Agreement itself contains no fixed price objective; rather, each year the members of the Agreement establish a price range based on current production and consumption trends, inventory levels, and other factors that influence the market.

The countries with the largest production and export quotas are Brazil, Colombia, and the Ivory Coast. All three, and the other 17 coffee-exporting members, are dependent on coffee exports for earnings of foreign exchange. Therefore, all of these countries have a keen interest in the determination of quotas and price ranges.

Consuming nations now have the opportunity to approve the final export quota distribution among the producing countries. Such approval allows the consuming nations to have a voice in insuring that world supply is maintained and that stocking levels in exporting countries are kept. Since the United States is such a large consumer, these changes allow the United States to have a more prominent role in the decisionmaking process within the ICA structure.

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[31] The current version of the International Sugar Agreement only covers information exchange, and does not contain any market-regulating provisions. No domestic implementing authority is therefore necessary for the sugar agreement.

[32] The Senate unanimously ratified the Agreement on July 27, 1983 (Treaty Doc. 98-2). The Committee on Foreign Relations published Executive Report No. 98-11 to accompany the treaty on June 29, 1983.

[33] The International Coffee Agreement Act of 1983, Public Law 98-120, approved October 12, 1983. See also H. Rept. No. 98-376 to accompany H.R. 3813, and S. Rept. No. 98-250 to accompany S. 1847.

The 1983 ICA also addressed certain concerns about violations of the export quota system when member countries sell coffee to nonmember countries, who in turn sell the coffee on the world market, driving down the price. The 1983 ICA strengthened the control system which monitors the flow of coffee from members to nonmembers, so that large sales by nonmember countries cannot be made to importing member countries in violation of the ICA quota system.

The administration of the ICA is managed by a London-based body known as the International Coffee Organization (ICO). Policy, however, is set by a Member Council. Votes on this Council are weighted, based on the member's participation in world trade. Decisions on policy must be passed by a two-thirds weighted vote of the members. The United States, with an import share of 30 percent, has an important voice in the decisions of the Council.

The International Coffee Agreement Act of 1983, which provides domestic legal authority to implement the ICA, only provided implementing authority for 3 years, even though the life of the 1983 ICA is 6 years. The implementing authority expired on September 30, 1986, and had not been renewed by Congress as of January 1, 1987.

Steel Import Stabilization Act

Title VIII of the Trade and Tariff Act of 1984, sets forth the provisions of the Steel Import Stabilization Act,[34] which grants the President authority to enforce the terms of bilateral arrangements limiting the export of steel products to the United States. Congress provided this authority in October 1984 in response to President Reagan's decision the previous month to reject a petition for import relief to the domestic steel industry under section 201 of the Trade Act of 1974, and instead to enter into a series of bilateral restraint agreements with steel-exporting nations to reduce their exports of steel to the United States.[35]

Background

In January 1984, Bethlehem Steel Corporation and the United Steelworkers of America jointly filed a petition under section 201 of the Trade Act of 1974 for import relief in the form of global quotas on imports of carbon and alloy steel products. In July 1984, in response to this petition, the International Trade Commission (ITC) submitted a report to the President setting forth its findings of serious injury and recommendations of quotas for five out of nine steel product categories.[36] On September 18, 1984 President Reagan announced his decision to deny import relief under section 203 of the Trade Act of 1974, and, instead, to negotiate bilateral restraints with steel-exporting countries to limit U.S. imports of steel, and to pursue a more vigorous policy of enforcement of the laws against unfair trade practices.[37] Based on the series of actions to be taken as part of the new steel trade policy, it was the expectation of the President that steel imports would be reduced to approximately 18.5 percent of the U.S. market, excluding semi-finished steel.[38]

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[34] Public Law 98-573, title VIII, approved October 30, 1984.

[35] Exec. Comm. 4046, September 18, 1984 (H. Doc. 98-263).

[36] Report to the President on Investigation No. TA-201-51, USITC Pub. No. 1553, July 1984.

[37] Exec. Comm. 4046, September 18, 1984 (H. Doc. 98-263).

In response to the President's decision, the following week legislation was introduced in the House of Representatives (H.R. 6301) to provide the President with express authority to enforce such bilateral restraint agreements, conditioned on adequate performance by the domestic steel industry in modernizing its plants and providing retraining to its former workers.[39] The Steel Import Stabilization Act, H.R. 6301, was reported favorably by the Committee on Ways and Means on September 27,[40] and passed by the House of Representatives on October 2, 1984. The House then passed H.R. 6301 as an amendment to an omnibus trade bill, H.R. 3398, and it was considered in the House-Senate conference on H.R. 3398. Title VIII of the Trade and Tariff Act of 1984 contains the provisions of the Steel Import Stabilization Act as agreed to by the conference. The provisions of title VIII took effect as of October 1, 1984.

Basic provisions

The Steel Import Stabilization Act provides the President, for up to five years, with authority to enforce the quantitative limitations, restrictions, and other terms agreed to in bilateral restraint arrangements between the United States and steel-exporting nations. The enforcement authority is broad in scope, authorizing the President "to carry out such actions as may be necessary or appropriate," including, but not limited to, requiring presentation of valid export licenses or other documentation as a condition of entry into the United States. The definition of "bilateral arrangements" provided in the Act is also intentionally broad, and refers to any arrangement, agreement, or understanding (including, but not limited to, any surge control understanding or suspension agreement) between the United States and any foreign country containing quantitative limitations, restrictions, or other terms relating to the importation into, or exportation to, the United States of steel products.

The Act provides the Secretary of Commerce specifically with authority to enforce restrictions on exports to the United States of steel pipes and tubes from the European Communities in accordance with the terms of the U.S.-E.C. Arrangement on Pipes and Tubes. This authority is specifically granted to the Secretary of Commerce in light of the Secretary's current responsibilities for enforcement of the U.S.-E.C. Arrangement on Basic Carbon Steel Products.

The enforcement authority provided by the Act is limited in duration to a maximum of 5 years, and is subject to annual renewal within the 5-year period. In order for the enforcement authority to renew for an additional year, the President must submit in writing prior to the anniversary date an affirmative determination to the

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[38] After expected imports of semi-finished steel are factored in, the import market share that was expected by the President's policy equalled 20.2 percent of the U.S. market.

[39] H.R. 6301 was introduced on September 25, 1984 by Congressman Dan Rostenkowski (D-Ill).

[40] House Report 98-1089.

House Committee on Ways and Means and Senate Committee on Finance that certain requirements set forth in the Act have been met. These requirements include the following:

(1) that the major steel companies, taken as a whole, have, during the relevant 12-month period, (a) committed substantially all of their net cash flow from steel operations for purposes of reinvestment in and modernization of their steel operations; and (b) taken sufficient action to maintain their international competitiveness;

(2) that each of the major steel companies committed, during the relevant 12-month period, not less than 1 percent of net cash flow to the retraining of workers, unless the President waives this requirement with respect to a particular company due to unusual economic circumstances; and

(3) that the enforcement authority remains necessary to maintain the effectiveness of bilateral arrangements undertaken to eliminate unfair trade practices in the steel sector.

If the President does not submit an affirmative determination that these conditions have been met, the enforcement authority permanently expires. If the President does submit such an affirmative determination, the enforcement authority renews for an additional year, at which time it would again be subject to the annual determination requirement. This process of annual renewal will continue until the authority is terminated, or until the authority has been in effect for 5 years, whichever is sooner.

The Act also required the Secretary of Labor to prepare, in consultation with the Steel Advisory Committee, and to submit to Congress by April 1, 1985, a proposed plan of action for assisting workers in communities that are adversely affected by imports of steel products. Such assistance must include retraining and relocation for former workers in the steel industry who are unlikely to return to work in the industry.

National Security Import Restrictions: Sections 232 and 233 of the Trade Expansion Act of 1962

Section 232

Section 232 of the Trade Expansion Act of 1962 [41] as amended by section 127 of the Trade Act of 1974 [42] and the Reorganization Plan of 1979 [43] authorizes the President to impose restrictions on imports which threaten to impair the national security. This authority has been used by the President to impose quotas and fees on imports of petroleum and petroleum products from time to time. Public Law 96-223 (imposing a windfall profit tax on domestic crude oil) amended section 232 to authorize either House of Congress to disapprove an action of the President to adjust oil imports.

Section 232 as amended requires the Secretary of Commerce to conduct immediately an investigation to determine the effects on national security of imports of an article, upon the request of any

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[41] Public Law 87-794, approved October 11, 1962, 19 U.S.C. 1351.

[42] Public Law 93-618, sec. 127, approved January 3, 1975, 19 U.S.C. 1862-1863.

[43] Reorganization Plan No. 3 of 1979, Exec. Order No. 12188, January 4, 1980, 44 Fed. Reg. 69273.

U.S. Government department or agency, application of an interested party, or upon his own motion. The Secretary must report the findings of his investigation and his recommendations for action or inaction to the President within one year after receiving the application or beginning the investigation. If the Secretary finds the article "is being imported in such quantities or under such circumstances as to threaten to impair the national security," he must so advise the President. Unless the President reverses this finding, he must take such action for such time as he deems necessary to "adjust" the imports of the article and its derivatives so imports will not threaten to impair the national security. The President must report to the Congress within 60 days the action taken and the reasons therefor.

The Secretary must hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to the investigation if it is appropriate and after reasonable notice. The Secretary must also seek information and advice from, and consult with, other appropriate agencies. Among the factors which the Secretary and the President must consider are domestic production needs for projected national defense requirements; domestic industry capacity to meet these requirements; existing and anticipated availability of resources, supplies, and services essential to the national defense; the growth requirements of such industries, supplies, services; imports in terms of their quantities, availability, character, and use as they affect such industries and U.S. capacity to meet national security requirements; the impact of foreign competition on the economic welfare of domestic industries; and any substantial unemployment, revenue declines, loss of skills or investment, or other serious effects resulting from displacement of any domestic products by excessive imports.

Section 233

Section 233 of the Trade Expansion Act of 1962 was added by section 121 of the Export Administration Amendments Act of 1985 (Public Law 99-64) as a means of enforcing national security export controls imposed under that Act.

Under section 233, any person who violates any national security export control imposed under section 5 of the Export Administration Act of 1979, or any regulation, order, or license issued under that section, may be subject to controls imposed by the President on imports of goods or technology into the United States. Any person who violates any multilateral national security export control regulation may be subject to import controls if: (1) negotiations with the government with jurisdiction over the violation have been held and were unsuccessful in restoring compliance; (2) the President has given the government involved and other parties to the multilateral agreement 60 days advance notice after the negotiations of proposed import controls; and (3) a majority of the parties to the multilateral agreement have concurred or abstained during the 60-day period on the issue of proposed import controls.

Balance of Payments Authority: Section 122 of the Trade Act of 1974

Section 122 of the Trade Act of 1974[44] provides the President with authority either to increase or reduce restrictions on imports into the United States to deal with balance of payments problems.

Tighter restrictions in the form of an import surcharge (not to exceed 15 percent ad valorem), temporary quota, or a combination of the two may be imposed for up to 150 days (unless extended by act of Congress) whenever fundamental international payments problems make such restrictions necessary to deal with large and serious U.S. balance of payments deficits, to prevent an imminent and significant depreciation of the dollar, or to cooperate with other countries in correcting an international balance of payments disequilibrium.

Existing import restrictions may be eased for a period of up to 150 days (unless extended by act of Congress) through a temporary reduction in the rate of duty on any article (not to exceed 5 percent ad valorem), a temporary increase in the value or quantity of imports subject to any type of import restriction, or a temporary suspension of any import restriction. Such restrictions may be eased whenever fundamental international payments problems require special measures to deal with large and serious balance of payments surpluses or to prevent significant appreciation of the dollar. Trade liberalizing measures must be broad and uniform as to articles covered. The President may not, however, liberalize imports of those products for which increased imports will cause or contribute to material injury to domestic firms or workers, impairment of national security, or otherwise be contrary to the national interest.

Certain conditions also are placed on the President's use of import restrictions for balance of payments purposes. Quotas may be imposed only if international agreements to which the United States is a party permit them as a balance of payments measure and only to the extent that the imbalance cannot be dealt with through an import surcharge. If the President determines that import restrictions are contrary to the national interest, he may refrain from imposing them but must inform and consult with Congress.

Section 122(d) requires that import restrictions be applied on a nondiscriminatory basis; it also requires that quotas aim to distribute foreign trade with the United States in a manner that reflects existing trade patterns. If the President finds, however, that the purposes of the provision would best be served by action against one or more countries with large and persistent balance of payment surpluses, he may exempt all other countries from such action. This section also expresses the sense of Congress that the President seek modifications in international agreements to allow the use of surcharges instead of quotas for balance of payments adjustment purposes. If such international reforms are achieved, the President's authority to exempt all but one or two surplus countries from import restrictions must be applied in a manner consistent with the new international rules.

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[44] Public Law sec. 122, approved January 3, 1975, 19 U.S.C. 2132.

Section 122(e) provides that import restrictions be of broad and uniform application as to product coverage, unless U.S. economic needs dictate otherwise. Exceptions under this section are limited to the unavailability of domestic supply at reasonable prices, the necessary importation of raw materials and similar factors, or if uniform restrictions will be unnecessary or ineffective (i.e., if products already are subject to import restrictions, are in transit, or are subject to binding contracts). The section prohibits the use of balance of payments authority or the exceptions authority to protect domestic industries from import competition. Any quantitative restriction imposed may not be more restrictive than the level of imports entered during the most recent representative period, and must take into account any increase in domestic consumption since the most recent representative period.

The President is authorized to modify, suspend, or terminate any proclamation issued under the section, either during the initial 150-day period or during any subsequent extension by act of Congress.

Background

Anticipating that oil-consuming nations would face large balance of payments deficits in an era of rapidly increasing oil prices, and believing that neither a reduction in the price of oil nor the necessary international monetary cooperation were certain to take place, Congress considered it necessary to authorize the President to impose surcharges or other import restrictions for balance of payments purposes, even though Congress assumed that under existing circumstances such authority was not likely to be used.[45] The Senate Committee on Finance indicated it was necessary to give the President explicit authority to impose such measures for balance of payments reasons, in light of judicial action striking down the use of the Trading with the Enemy Act for such purposes.[46] President Nixon had invoked that law in 1971 when he imposed a temporary 10 percent import surcharge to redress a balance of payments deficit.

The use of surcharges for balance of payments purposes had gained de facto acceptance among industrialized GATT nations during the two decades preceding the 1974 Trade Act, but explicit GATT rules had never been adopted. GATT Article XII authorizes restrictions on the quantity or value of goods imported by a country facing a balance-of-payments deficit. GATT rules do not, however, explicitly sanction the use of surcharges for balance-of-payments purposes, nor do they establish a means to deal with countries running persistent balance-of-payments surpluses. The Texts Concerning a Framework for the Conduct of World Trade,[47] negotiated during the Tokyo Round of Multilateral Trade Negotiations, elaborated on the rules which apply to countries' use of import restrictions for balance-of-payments purposes. The so-called Framework Agreement did not fundamentally alter GATT rules in this area, however.

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[45] Senate Report 93-1298 at 87-88.

[46] The decision of the Customs Court was subsequently reversed on appeal. *U.S.* v. *Yoshida International, Inc.*, 526 F.2d 560 (C.C.P.A. 1975).

[47] MTN/FR/W/20/Rev. 2, reprinted in House Doc. No. 96-153, pt. I, at 619.

When it passed the Trade Act of 1974, Congress urged the President to enter into negotiations to develop new rules and required that U.S. surcharges measures, if imposed, conform to any new international standards.[48]

Section 122 authority has never been invoked.

Product Standards

U.S. policy regarding the application of standards and certification procedures to imported products is based on the multilateral Agreement on Technical Barriers to Trade under the General Agreement on Tariffs and Trade (GATT), and its U.S. implementing legislation under title IV of the Trade Agreements Act of 1979.[49]

Differences in product standards, listing and approval procedures, and certification systems often can impede trade and can be manipulated to discriminate against imports. Imports may be tested to determine whether they conform with domestic standards under conditions more onerous than those applicable to domestic products. Certification systems, which indicate whether products conform to standards, may limit access for imports or may discriminate by denying the right of a certification mark on imported products. Prior to the 1979 Agreement, however, there was virtually no multilateral cooperation or supervision to promote international harmonization and to discourage nationalistic discriminatory practices.

AGREEMENT ON TECHNICAL BARRIERS TO TRADE

The Agreement on Technical Barriers to Trade,[50] commonly referred to as the Standards Code, was one of the agreements on nontariff measures concluded during the 1973-79 Tokyo Round of GATT Multilateral Trade Negotiations. The Code went into force on January 1, 1980. The Code does not attempt to create standards for individual products, or to set up specific testing and certification systems. Rather, it establishes, for the first time, international rules among governments regulating the procedures by which standards and certification systems are prepared, adopted and applied, and by which products are tested for conformity with standards. The Code was a major U.S. negotiating objective during the Tokyo Round, particularly given the formation of a European regional electrical certification system closed to outside suppliers.

The Standards Code seeks to eliminate national product standardization and testing practices and certification procedures as barriers to trade among the signatory countries and to encourage the use of open procedures in the adoption of standards. At the same time, it does not limit the ability of countries to reasonably protect the health, safety, security, environment, or consumer interests of their citizens. Generally, U.S. standards-setting processes have followed these basic norms, whereas other countries' standards-related activities have generally been closed to participation from foreign countries; these signatories are obliged to change their practices in order to comply with Code principles.

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[48] Senate Report 93-1298 at 88.

[49] Public Law 96-39, approved July 26, 1979, 19 U.S.C. 2531-2573.

[50] MTN/NTM/W/192 Rev. 5, reprinted in House Doc. No. 96-153, pt. I, at 211.

The Code's provisions are applicable to all products, both agricultural and industrial. They are not applicable to standards involving services, technical specifications included in government procurement contracts, or standards established by individual companies for their own use. The Code addresses governmental and non-governmental standards, both voluntary and mandatory, developed by central governments, state and local governments, and private sector organizations. Only central governments, however, are directly bound by Code obligations, whereas regional, state, local, and private organizations are subject to a second level of obligation whereby signatories "shall take such reasonable measures as may be available to them" to ensure compliance.

The Code is prospective, applying to new and revised standards-related activities. If a signatory country believes, however, that an existing regulation developed and put into effect before the Code came into force conflicts with the basic tenets of the Code, then that signatory may use the Code's dispute settlement mechanism to help resolve the problem.

The Standards Code contains the following key provisions obligating signatories to follow several general principles pertaining to standards-related activities:

(1) The most important and fundamental principle obligates signatory governments not to develop, intentionally or unintentionally, product standards, technical regulations, or certification systems which create unnecessary obstacles to foreign trade. The Code recognizes nations' sovereign right to formulate standards and certification systems to protect life, health and environment, but such regulations should be least disruptive as possible to international trade.

(2) The second fundamental principle is that national or regional certification systems are to grant access to foreign or non-member signatory suppliers under conditions no less favorable than those granted to domestic or member country suppliers, a major change in most signatory policies. Signatories can no longer refuse to give their national certification marks to imported products, provided that the imported products fully meet the technical requirements of the certification system. Also regional certification bodies must be open to suppliers from all Code signatories.

(3) Signatories must provide foreign imported products the same treatment as domestic goods with respect to standards, technical regulations, and testing and certification procedures, i.e., an extension of the national treatment provision of GATT which prohibits discrimination against imported products.

(4) When developing new or revising existing product standards or technical regulations, governments are to use existing or proposed international standards as the basis where it is appropriate. Other signatories may request an explanation if a government fails to follow this principle.

(5) Whenever appropriate, signatories are encouraged to specify technical regulations and standards in terms of performance rather than design or descriptive characteristics.

If a foreign product must be tested to determine whether it meets domestic standards before it can be imported, the Code provides a number of criteria that signatories are to follow to ensure non-discriminatory treatment. For example, foreign goods should not have to undergo costlier or more complex testing than domestic products in comparable situations. In addition, signatories are obligated to use the same methods and administrative procedures on imported as well as domestic goods. The Code does not obligate signatories to recognize test results or certification marks from another country. It does, however, encourage signatories to accept, whenever possible, test results, certifications or marks of conformity from foreign bodies, or self-certification from foreign producers even when the test methods differ from their own, provided that the importing country is satisfied that the exporting country's products meet the required standards.

Another important element of the Standards Code is the obligation of signatories to open up the process of developing or applying standards and certification procedures to each other. Governments must make available proposed mandatory or voluntary standards and certification procedures for comment during the drafting stage by other signatories before they become final regulations. Each signatory government must establish an inquiry point to respond to all reasonable questions from other signatories concerning their central, local, and state government standards and certification procedures.

Finally, the Code establishes a Committee of Signatories which meets periodically to oversee implementation and administration of the agreement, as well as to discuss any new issues or problems which arise. The Committee may set up panels of experts or working parties as required to conduct Committee business or handle disputes.

TITLE IV OF THE TRADE AGREEMENTS ACT OF 1979

Congress approved the Agreement on Technical Barriers to Trade under section 2 of the Trade Agreements Act of 1979. Title IV of that Act implements the obligations of the Standards Code in U.S. law.[51] Since U.S. practices were already in conformity with the Code, title IV did not amend, repeal, or replace any existing law. It does ensure that adequate structures exist within the Federal Government to inform the U.S. private sector about the standards-related activities of other nations, facilitate the ability of the United States to comment on foreign standards-making and certifications, and process domestic complaints on foreign practices.

Section 402 of the 1979 Act requires all Federal agencies to abide by the above-described principles and provisions of the Code. In addition, section 403 states the "sense of Congress" that no State agency and no private person should engage in any standards-related activity, i.e., development or implementation of product standards or certification systems, that creates unnecessary obstacles to foreign trade, and requires the President to "take such reasonable measures as may be available" to promote their observance of Code obligations.

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[51] 19 U.S.C. 2531-2573.

The U.S. Trade Representative (USTR) is designated to coordinate U.S. trade policies related to standards and discussions and negotiations with foreign countries on standards, issues, and to oversee implementation of the Standards Code. The Departments of Agriculture and Commerce are required to work with the USTR on agricultural and non-agricultural issues respectively and to establish technical offices to fulfill a number of functions, particularly supplying notices to interested parties of proposed foreign government standards and receiving and transmitting private sector comments. The Department of Commerce maintains the National Center for Standards and Certification within the National Bureau of Standards as the national inquiry point required under the Code.

Finally, title IV contains provisions concerning administrative and judicial proceedings regarding standards-related activities. No private rights of action are created by title IV; private parties can petition the U.S. Government to invoke provisions of the Code against practices of other signatories.

Government Procurement

U.S. policy on government purchases of foreign goods and services is based on the Buy American Act of 1933,[52] the multilateral Agreement on Government Procurement under the General Agreement on Tariffs and Trade (GATT), and its implementing legislation under title III of the Trade Agreements Act of 1979.[53] In addition, separate provisions in appropriation Acts and other legislation apply more restrictive Buy American-type provisions on particular types of purchases.

Governments are among the world's largest purchasers of nonstrategic goods. Most of this vast market has traditionally been closed to foreign producers by means of formal and informal administrative systems of national discrimination in favor of domestic producers. Although U.S. preferences for domestic suppliers are clearly set out by law and regulation, other countries usually have achieved their discrimination by highly invisible administrative practices and procedures. Government procurement is also excluded from GATT national treatment and most-favored-nation obligations.

BUY AMERICAN ACT

The Buy American Act of 1933, as implemented by Executive Orders 10582 and 11051, requires the U.S. Government to purchase domestic goods and services whenever U.S. sources are of sufficient quality and quantity unless the head of the agency or department involved determines the prices of the domestic supplies are "unreasonable" or their purchase would not be in the U.S. national interest. Executive Order 10582, issued in 1954, states that if the domestic price of a good or service is 6 percent or more above the foreign price, then it is to be considered unreasonable and the foreign product may be purchased. The order also permits agencies to use a differential above 6 percent if it would serve the national interest. The Department of Defense has been using a 50 percent differential since 1962 for its procurement, except on military purchases under memoranda of understanding with NATO countries. The order also indicated that a differential could be applied in cases where a domestic bid generated employment in a labor surplus area as designated by the Secretary of Labor. No specific percentage was stated, but generally a 12 percent differential has been allowed for bids which benefit economically distressed areas.

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[52] Act of March 3, 1933, ch. 212, title III, 47 Stat. 1520, 41 U.S.C. 10a-10d.

[53] Public Law 96-39, title III, approved July 26, 1979, 19 U.S.C. 2511-2518.

AGREEMENT ON GOVERNMENT PROCUREMENT

The Agreement on Government Procurement, also known as the Government Procurement Code,[54] was concluded as one of the agreements on nontariff measures during the 1975–79 Tokyo Round of GATT Multilateral Trade Negotiations (MTN). The Code went into effect on January 1, 1981. A major aim of the United States in the MTN was to develop an international obligation among signatory countries to employ transparent, nondiscriminatory practices at all stages of the procurement process and to open up procurement systems in the high export potential government procurement markets of Europe, Japan, and Canada enabling U.S. firms to compete for foreign government contracts on an equal footing.

The Code is designed to discourage discrimination against foreign suppliers at all stages of the procurement process, from the determination of the characteristic of the product to be purchased to tendering procedures, to contract performance. The Code prescribes specific rules on the drafting of the specifications for goods to be purchased, advertising of prospective purchases, time allocated for the submission of the bids, qualification of suppliers, opening and evaluation of bids, award of contracts, and on hearing and reviewing protests.

Signatories must publish their procurement laws and regulations and make them consistent with the Code rules. Purchasing entities have discretion in their choice of purchasing procedures, provided they provide equitable treatment of all suppliers and allow the maximum degree of competition possible.

Each government agency covered by the Code is required to publish a notice of each proposed purchase in an appropriate publication available to the public, and to provide all suppliers with enough information to permit them to submit responsive tenders. Losing bidders must be informed of all awards and be provided upon request with pertinent information concerning the reasons they were not selected and the name and relative advantages of the winning bidder. Signatories must also provide data on their procurements on an annual basis.

The adoption or use of technical purchase specifications which act to create unnecessary obstacles to international trade is prohibited. The Code mandates the use, where appropriate, of technical specifications based on performance rather than design, and of specifications based on recognized national or international standards.

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[54] MTN/NTM/W/211/Rev. 2, reprinted in House Doc. No. 96–153, pt. I, at 69.

While the Code does not prohibit the granting of an offset or the requirement that technology be licensed as a condition of award, signatories recognize that offsets and requirements for licensing of technology should be limited and used in a nondiscriminatory way.

The Code is largely self-policing. Rules and procedures are structured to help provide solutions to problems between potential suppliers and procuring agencies. As a next step, the Code provides for bilateral consultations between the procuring government and the government of the aggrieved supplier. As a last resort, the Code dispute settlement mechanism under the Committee of Signatories provides for conciliation or establishment of a fact-finding panel.

Coverage of the agreement

The original U.S. negotiating objective had been to include all entities under the direct or substantial control of governments. Most signatory governments were not prepared to agree to this breadth of coverage. Consequently, the Code applies solely to those agencies listed by each signatory in an Annex on contracts valued above 150,000 Special Drawing Rights (about $161,000). In the context of the MTN Agreement on Trade in Civil Aircraft, signatories agreed to eliminate discriminatory practices by all government entities in purchasing aircraft, without a value threshold.

The benefits of the Code are available solely on goods originating in the territory of signatory countries. It does not apply to government services except those incidental to the purchase of goods, construction contracts, purchases excluded on national security grounds, or to purchases by Ministries of Agriculture for farm support programs or human feeding programs such as the U.S. school lunch program. Procurements by state and local governments, including those with Federal funds such as under the Surface Transportation Act, are not subject to the Code.

For the United States, the Code does not apply to the Department of Transportation, the Department of Energy, the Tennessee Valley Authority, the Corps of Engineers of the Department of Defense, the Bureau of Reclamation of the Department of the Interior, and the automated Data and Telecommunications Service of the General Services Administration. In addition, government chartered corporations which are not bound by the Buy American Act, such as the U.S. Postal Service, COMSAT, AMTRAK, and CONRAIL, are not covered.

United States Code coverage also does not apply to set-aside programs reserving purchases for small and minority businesses, prison and blind-made goods, or to the requirements contained in Department of Defense and GSA Appropriations Acts that certain products (i.e., textiles, clothing, shoes, food, stainless steel flatware, certain specialty metals, buses, hand tools, ships, and major ship components) be purchased only from domestic sources.

The Code calls for all signatories, within 3 years after it goes into effect, to undertake further negotiations with a view to improving and expanding Code coverage.

TITLE III OF THE TRADE AGREEMENTS ACT OF 1979

Congress approved the Agreement on Government Procurement under section 2 of the Trade Agreements Act of 1979. Title III of that Act implements the obligations of the Code in U.S. law with respect to purchases by covered Government entities.[55] Since Code provisions reflect many aspects of existing U.S. procurement practice, few changes in domestic law were required.

Executive Order 12260, issued on December 31, 1980, requires all U.S. Government agencies covered by the Code to observe its provisions. Section 301 of the 1979 act authorizes the President to waive the application of discriminatory government procurement law, such as the Buy American Act, and labor surplus set-asides that are not for a small business. The waiver authority applies only to purchases covered by the Code and only to foreign countries designated by the President that meet one of four statutory conditions basically requiring the country to provide appropriate reciprocal, competitive government procurement opportunities to U.S. products and suppliers, unless the country is a least developed country.

Buy American Act preferences still apply to contracts below the 150,000 special drawing rights threshold, purchases by noncovered entities, and procurement from countries not eligible for a waiver regardless of contract size. Special Buy American-type restrictions under other laws (e.g., small business set asides, required domestic sourcing of particular goods) are also not affected.

Section 302 of the 1979 Act is designed to encourage other countries to participate in the Code and provide appropriate reciprocal competitive opportunities. For this purpose, the President is required, after the date on which any waiver first takes effect, to prohibit the procurement of products otherwise covered by the Code from non-designated countries. The President may, however, (1) delay the prohibition for up to two years except with respect to procurements from major industrial countries; (2) authorize agency heads to waive prohibitions on a case-by-case basis when in the national interest; and (3) authorize the Secretary of Defense to waive the prohibition for products of any country which enters into a reciprocal procurement agreement with the Department of Defense. All such waivers are subject to interagency review and general policy guidance.

Section 303 authorized the President to waive as of January 1, 1980 the application of the Buy American Act for purchases by any government entity of civil aircraft and related articles irrespective of value from countries party to the MTN Agreement on Trade in Civil Aircraft.

Section 304 sets forth negotiating objectives in conjunction with the renegotiation of the Code within 3 years to improve its operation and broaden the coverage. The President is directed to seek more open and equitable foreign market access and the harmonization, reduction, or elimination of devices distorting government procurement trade. He must also seek equivalent competitive opportunities in developed countries for U.S. exports in appropriate product sectors as the United States affords their products, such as in the heavy electrical, telecommunications, and transport equipment sectors. The President must report to the committees of jurisdiction during the renegotiations if he determines they are not progressing satisfactorily and are not likely to result within 12 months in expanded agreement coverage of principal developed country purchasers in appropriate product sectors. The President is also directed to indicate appropriate actions to seek sector reciprocity with such countries in government procurement, and may recommend legislation to prohibit procurement by entities not covered by the Code from such countries.

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[55] 19 U.S.C. 2511-2518.

Title III of the 1979 Act also contains a number of reporting requirements to the Congress on various aspects of the Code and its economic impact and implementation.

Chapter 4: LAWS REGULATING EXPORT ACTIVITIES

Export Administration Act of 1979, As Amended [1]

Background

Through statute, Congress has authorized the President to control the export of various commodities. The three most significant programs for controlling different types of exports deal with nuclear materials and technology, defense articles and services, and nonmilitary dual-use goods and technology. Under each program, licenses of various types are required before an export can be undertaken. The Nuclear Regulatory Commission is responsible for the licensing of nuclear materials and technology under the Atomic Energy Act. The Department of State is responsible for the licensing of exports of defense articles and services and maintains the Munitions Control List under the Arms Export Control Act.

Export licensing requirements for most commerical goods and technical data are authorized by the Export Administration Act under the jurisdiction of the Office of Export Administration in the Department of Commerce. The three basic purposes of export controls are to protect the national security, to further U.S. foreign policy interests, and to protect commodities in short supply. The Secretary of Defense is authorized to review certain applications for national security purposes while the Secretary of State reviews specified license applications for foreign policy purposes.

The export of goods or technical data subject to the Commodity Control List (CCL) must be authorized by licenses (either individual validated licenses or bulk licenses authorizing multiple shipments) which are granted on the basis of such factors as intended end-use and the probability and likely effect of diversion to military use. Exports and reexports from a foreign country of U.S.-origin commodities and technical data or of foreign products containing U.S.-origin components or technology are also regulated. The CCL contains over 200 categories of goods and technologies applied to seven country groups, with the most stringent controls (near total embargoes) on exports to Cuba, Kampuchea, North Korea, Vietnam, and Nicaragua.

The foreign policy export control authority was used by President Carter to embargo the export of grain to the Soviet Union after the 1979 Soviet invasion of Afghanistan. President Reagan used it again in 1981 until late 1983, following the imposition of martial law in Poland, to embargo sales by U.S. firms and their foreign subsidiaries of oil and gas transmission and refining commodities and technology for use by the Soviet Union on its natural gas pipeline to Western Europe. Foreign policy controls are maintained on numerous other commodities, including technical data and equipment for the manufacture of trucks at the Soviet Kama River truck complex. Crime control and detection instruments and equipment are subject to control for foreign policy reasons to countries which may engage in persistent gross violations of human rights. Certain other goods and technology are controlled to five countries (Libya, Iran, Syria, South Yemen, and Cuba) due to their repeated support of international terrorism.

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[1] 50 U.S.C. App. 2401, P.L. 96-72, as amended by P.L. 96-533, P.L. 97-145, P.L. 98-108, P.L. 98-207, P.L. 98-222, P.L. 99-64, P.L. 99-399, P.L. 99-441, and P.L. 99-633.

The short supply control authority was used to help control raw materials prices during the Korean conflict. In 1973 President Nixon prohibited soybean exports as a response to rapidly increasing prices. The export of crude oil carried on the Trans-Alaska Pipeline is prohibited. Exports of crude oil and refined and unprocessed western red cedar harvested from Federal or State lands are subject to validated licensing requirements.

The U.S. Government has employed export controls continuously since 1940. The first controls were imposed to avoid or mitigate the scarcity of various critical commodities during World War II and to assure their equitable distribution within the U.S. economy and to U.S. allies. Export controls were expected to terminate after shortages created by World War II were substantially eliminated. However, the "Cold War" led to enactment of the Export Control Act of 1949, designed to control all U.S. exports to Communist countries.

The Export Control Act of 1949 provided for the control of items in short supply, for controls to further U.S. foreign policy goals, and for the examination of exports to Communist countries which might have military application. The 1949 Act, amended and extended as appropriate, remained in effect for 20 years. The 1949 Act was then replaced by the Export Administration Act of 1969, which was in turn replaced by the Export Administration Act of 1979.

The 1969 Act maintained the basic export control system set up by the Export Control Act, but called for a removal of controls on goods and technologies that were freely available from foreign sources and that were only marginally of military value. The 1969 Act was amended in 1972, 1974, and 1977.

A significant expansion of controls was brought about in 1977 when Congress amended the 1969 Act to authorize the control of goods and technology exported by any person subject to the jurisdiction of the United States, thus permitting the Department of Commerce to exercise control over foreign-origin goods and technical data reexported by U.S.-owned or U.S.-controlled companies abroad. Antiboycott policies (originally established by Congress in 1965) were also substantially strengthened in 1977.

EXPORT ADMINISTRATION ACT OF 1979

The Export Administration Act of 1979, as reauthorized and amended in 1985, currently provides the broad and primary authority for controlling the export from the United States to potential adversary nations of civilian goods and technology which could contribute significantly to military capability of controlled countries (defined in section 620(f) of the Foreign Assistance Act of 1961, consisting of Communist countries) if diverted to military application (national security controls under section 5). Like the previous law, the 1979 Act also authorized the President to impose export controls for foreign policy reasons or to fulfill international obligations (foreign policy controls under section 6) and to protect the domestic economy from an excessive drain of scarce materials and to reduce the inflationary impact of foreign demand (short supply controls under section 7). The Act also continues the 1977 antiboycott program (section 8) which prohibits U.S. persons from taking action with the intent to comply with, further, or support any foreign country boycott against any country friendly to the United States (primarily Arab states against Israel).

In its 1979 review of the Export Administration Act of 1969, the Congress made substantial changes in the statute. Separate and distinct procedures and criteria were established for imposing national security and foreign policy controls. Precise time deadlines were set for the processing of export license applications. Development of a "militarily critical technologies list" (MCTL) was mandated, both as a means of reviewing the adequacy and focus of the existing Commodity Control List of categories of goods and technologies subject to Commerce export controls, and as a possible means of arriving at a more limited control list containing only the most militarily significant technologies. Foreign availability of goods controlled by the United States was, for the first time, made a factor in decisions to license such items for export.

The Act also formally authorized U.S. participation in the informal multilateral export control body known as COCOM (Coordinating Committee on Multilateral Export Controls) in which the NATO countries (with the exception of Iceland) and Japan also participate. Since 1950, COCOM has attempted to coordinate the export control policies of the Western allies with respect to Communist countries. Representatives of the participating governments meet periodically to set guidelines for controls on exports to Communist countries. The 1979 Act directed the President to negotiate with other COCOM governments in an effort to reach agreement on reducing the scope of export controls, holding periodic high-level meetings on COCOM policy, publishing the list of items controlled by COCOM, and introducing more effective procedures for enforcing COCOM export controls.

The 1979 Act authorized the administration of export controls until September 30, 1983. The Act was extended temporarily three times during the 98th Congress, through October 15, 1983, subsequently through February 28, 1984, and finally until March 30, 1984,[1a] while the Congress considered proposals for major changes in the law. During the lapses in authority in 1983 and after the 1979 Act terminated on March 30, 1984, and House-Senate differences could not be resolved prior to congressional adjournment on October 12, 1985, the President administered export controls under the authority of the International Emergency Economic Powers Act and Executive Order 12470 of March 30, 1984, as an interim method of control until new authority could be passed by Congress. The Export Administration Amendments Act of 1985, which reauthorized the 1979 Act for 4 years until September 30, 1989, with amendments, was enacted on July 12, 1985.

[1a] Public Law 98-108, approved October 1, 1983.
Public Law 98-207, approved December 5, 1983.
Public Law 98-222, approved February 29, 1984.

EXPORT ADMINISTRATION AMENDMENTS ACT OF 1985

The 1985 Act left intact the basic structure of U.S. national security, foreign policy, and short-supply export controls. It also retained the Commodity Credit Control List and export licensing system.

Within this basic framework, however, the 1985 Act includes provisions designed to ease the total licensing burden on U.S. business in order to keep U.S. exports competitive internationally. Licensing requirements for exports of certain relatively low technology goods and technology to nations that are members of COCOM were eliminated and high technology exports to COCOM countries are to receive expeditious handling (15 days). The Department of Commerce is required to establish a new "comprehensive operations license," to obviate the need for individual validated licenses for day-to-day technical data transactions within multinational enterprises and between other related firms which Commerce declares eligible and which do not involve transfers to controlled nations. The Secretary of Commerce is directed to review and revise, as necessary, the list of items subject to export control at least once a year. The Act also includes provisions to accelerate the application process when licenses are necessary.

The 1985 amendments also addressed the issue of foreign availability specifying a process to provide for the review and decontrol of goods found to be widely available and unable to be brought under control.

The second main goal in amending the 1979 Act was to promote U.S. national security interests by providing stricter controls for the export of critical items and strengthening the enforcement of U.S. export controls. The 1985 Act requires the United States to undertake negotiations with COCOM countries to achieve greater coordination and compliance with multilateral controls, fewer exceptions to the control list, and strengthened and uniform enforcement. It creates new criminal offenses against illegal diversions and adds to the broad range of sanctions against violators of U.S. export controls.

The Act also restrained the President's authority to impose new foreign policy export controls, particularly to embargo agricultural exports. Additional requirements for consultations with industry and Congress prior to the imposition of foreign policy controls and greater attention to specified criteria, including the foreign availability of competing products, are to be considered prior to decisions to extend, expand, or impose export controls.

The 1985 Act also imposed limitations on, but did not entirely eliminate, the discretion of the President to impose foreign policy controls on exports subject to existing contracts. The Act prohibits controls on exports of goods or technology under existing contracts except where the President determines and certifies to the Congress that a breach of the peace poses a serious and direct threat to

U.S. strategic interests and the prohibition or curtailment of such contracts would be instrumental in remedying the situation posing the direct threat.

The Act sets forth stiffer penalties for violators and grants new powers for enforcement to the Department of Commerce and the U.S. Customs Service and clarifies the respective roles of these agencies. Commerce retains the primary responsibility for licensing and domestic enforcement whereas Customs was given primary responsibility for enforcement at all U.S. ports of exit and entry as well as all enforcement responsibility overseas. The legislation itself was silent on the controversial issue of the role and authority of the Department of Defense in reviewing export license applications for U.S. shipments to Western nations.

The Act created a new Under Secretary of Export Administration and two Assistant Secretaries in the Department of Commerce and a new National Security Council Office in the Department of Defense. The effective date for the Under Secretary of Export Administration and two Assistant Secretaries was delayed until October 1, 1987, by the Defense Production Act (P.L. 99-441). Congress also directed that an Office of Foreign Availability be established in the Department of Commerce.

Foreign Corrupt Practices Act

During the mid-1970's, investigations and administrative and legal actions against numerous domestic corporations revealed the practice of making questionable or illegal payments by U.S. corporations to foreign government officials. The legal and regulatory mechanisms for dealing with such payments had involved actions by the Securities and Exchange Commission (SEC) against public corporations for concealing from required public disclosure substantial payments made by the firm, and the potential for an antitrust action for restraint of trade or fraud prosecution by the Department of Justice.

Government officials and administrators contended that more direct prohibitions on foreign bribery and more detailed requirements concerning corporate recordkeeping and accountability were needed to deal effectively with the problem.

The Foreign Corrupt Practices Act of 1977 [2] was enacted to prevent corporate bribery of foreign officials, and is comprised of three basic provisions:

1. *Books and Records.* Section 102 of the Act amends section 13(b) of the Securities Exchange Act of 1934 [3] to require firms with securities registered with the SEC to keep detailed books, records, and accounts accurately reflecting corporate payments and transactions. This provision would thus prohibit the "disguising" of questionable payments made to persons overseas and would prohibit so-called secret slush funds, that is, "inaccurate books, off-the-book accounts and related practices".

Penalties for violations of the books and records requirements are those penalties applicable generally to violations of other provisions of the Securities Exchange Act. In addition to civil injunctive relief that may be sought by the SEC, criminal penalties of fines up to $10,000 or imprisonment of up to 5 years, or both, may be imposed.

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[2] Public Law 95-213, title I, approved December 19, 1977, 15 U.S.C. 78a-78ff.

[3] Public Law 73-291, ch. 404, approved June 6, 1934, 15 U.S.C. 77b-78hh.

2. *Internal Accounting Controls.* Section 102 further amends section 13(b) of the Securities Exchange Act to require firms with securities registered with the SEC to institute and maintain an adequate internal accounting control system to assure management's control, authority, and responsibility over the firm's assets and "that the assets of the issuer are used for proper corporate purpose". The maintenance of an internal accounting control system is required to attempt to assure that transactions of the firm are executed and access to the firm's assets is permitted only "in accordance with management's general or specific authorization" and to assure that transactions are recorded and identified in conformance with generally accepted accounting standards. Penalties for violations of this provision are the same as those for the books and records provision.

3. *Criminalization of Foreign Bribery.* Sections 103 and 104 of the Act specifically prohibit domestic firms, whether registered with the SEC or not, from corruptly bribing a foreign official, a foreign political party, party official, or candidate for the purpose of obtaining or maintaining business. Criminal penalties are provided for any firm regulated by the SEC or for any other domestic concern which uses the mails or interstate commerce "corruptly" in furtherance of an offer of payment of money or anything of value to a "foreign official" or to a political party, party official, or candidate for foreign political office for the purpose of influencing such person in his or her decisionmaking or in the use of his or her influence to affect governmental decisions to assist the firm in obtaining or retaining business.

In addition to prohibiting such bribes directly by a firm or by any of its employees, officers, agents, or directors acting on its behalf, the payment of money to any person by a firm when the firm knew or had reason to know that the payment or part of that payment was to be used to bribe a foreign official is also subject to penalty.

Penalties for violations of the bribery provisions of the Act include fines for the firm or corporation of up to $1,000,000, and fines of up to $10,000, or imprisonment of up to 5 years, or both, for individuals who are convicted of violating these provisions. The Attorney General is further authorized to seek injunctive relief against domestic firms or individuals when it appears that they are about to engage in a violation of the bribery provisions.

The recordkeeping and accounting controls provisions of the Act, requiring fair and accurate accounting of corporate transactions and expenditures with respect to payments made overseas, are under the administrative authority of the SEC under the amended provisions of the Securities Exchange Act of 1934. The enforcement of the criminal penalties for corporate "bribery" of foreign officials as proscribed under the Act is under the prosecutorial authority of the Department of Justice.

Domestic International Sales Corporation (DISC) and Foreign Sales Corporation (FSC)

The Domestic International Sales Corporation (DISC) and its successor, the Foreign Sales Corporation (FSC) provide for the tax treatment of U.S. export earnings. The DISC provisions of the Internal Revenue Code were enacted in 1971 as title V of the Revenue Act of 1971.[4] The DISC legislation responded to a perceived need to stimulate U.S. exports in face of steadily declining trade surpluses and to encourage U.S. manufacturers to locate their export-oriented production facilities in the United States rather than overseas. Existing U.S. tax laws were seen as creating an incentive for locating production facilities offshore to serve overseas markets. In addition, other countries were believed to be more generous in their tax treatment of export earnings, and the DISC legislation was considered necessary to put U.S. exporters on an equal footing.

The DISC tax benefits consist of the deferral of a U.S. firm's Federal income tax liability on a portion of its export earnings. In general, a firm is allowed to allocate a portion of its export income to a specially defined subsidiary, known as a Domestic International Sales Corporation (DISC). The DISC itself is tax-exempt, and the parent firm is taxed at its normal rate on income distributed to it from its DISC. For the parent corporation, therefore, the tax liability on a portion of the income retained by the DISC is deferred until the parent receives it as a distribution. To qualify for tax exemption, a DISC must be incorporated in the District of Columbia or one of the 50 States, satisfy certain gross receipts and gross assets tests relating to the level of export activity, and meet certain other requirements specified in the law.

The DISC provisions were amended in 1974 to enable a financing corporation to qualify as a DISC.[5] The Tax Reduction Act of 1975 [6] denied DISC benefits for the export of natural resources and energy products and for products subject to export control under the Export Control Act of 1969.

Proponents of DISC provisions have argued that DISC benefits provide significant impetus to U.S. exports; opponents argue that DISC's revenue costs have been high and the impact on exports minimal. Partly in response to such criticisms, the size of DISC benefits was curtailed under the Tax Reform Act of 1976 [7] by linking the amount of the benefit to the annual increase in a firm's export income. The 1976 Act also reduced DISC benefits for military goods. The Tax Equity and Fiscal Responsibility Act of 1982 [8] further reduced the size of the tax benefit.

In December 1981, the GATT Council formally adopted four GATT panel reports issued in 1976, finding the DISC and the tax practices of France, Belgium and the Netherlands in violation of GATT rules on the tax treatment of export earnings. In the case of the DISC, the failure to collect interest on the deferred taxes was judged to be an export subsidy. In order to bring U.S. practices into compliance with GATT, the Reagan administration proposed and Congress adopted a revenue-neutral replacement for the DISC in 1984.

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[4] Public Law 92-178; Internal Revenue Code secs. 991-997.
[5] Public Law 93-482, approved October 26, 1974.
[6] Public Law 94-12, approved March 29, 1975.
[7] Public Law 94-455, approved October 4, 1976.
[8] Public Law 97-248, approved September 3, 1982.

The Deficit Reduction Act of 1984 [9] repealed the DISC provisions for all except small businesses, as defined by the Act. The Act instead provides for the establishment of a Foreign Sales Corporation (FSC), and exempts from tax a portion of the export income of a FSC if certain foreign presence and economic process tests are met. In general, in order to qualify for partial tax exemption, a FSC must conduct a specified amount of its economic activities outside the United States, management of the FSC must take place outside the United States, arms-length pricing rules must be adhered to, and other requirements satisfied.

The Deficit Reduction Act further provides special rules for small businesses which allow U.S. exporters with relatively small export gross receipts to elect to be either a small DISC or a small FSC. A small DISC may defer income from $10 million or less of export gross receipts, but an interest charge tied to the T-bill rate is imposed on the taxes deferred. FSC benefits are available for up to $5 million of the export gross receipts of a firm that elects to be a small FSC. A small FSC is exempt from the foreign presence and economic process requirements but must meet the other tests established by the Deficit Reduction Act to qualify as a FSC. The 1984 Act forgives all taxes deferred on income accumulated by DISC's in existence on December 31, 1984. The new FSC provisions apply to all transactions after December 31, 1984.

Export Trading Companies

EXPORT TRADING COMPANY ACT OF 1982

The Export Trading Company Act of 1982 (ETC Act) [10] provides for the establishment of an export trading company for the purpose of providing export trade services to U.S. exporting businesses. The basic purpose of the Export Trading Company Act is to stimulate U.S. exports by encouraging and facilitating exporting by small- and medium-sized businesses. Historically, exporting has been conducted by only a fraction of the U.S. business community and generally by large firms. Most small- and medium-sized firms have relied on the vastness of the domestic market for their business expansion. Few such firms individually have the knowledge and expertise about selling overseas or have been able to afford the front-end costs associated with foreign market penetration, and generally do not have access to trade-related services (e.g., foreign market research, distribution, and financing) available to larger companies.

Export trading companies (ETC's) generally assume the risks associated with international trade by taking title to goods domestically and handling subsequent export operations. Economies of scale, not usually available to a small- or medium-sized company operating individually, are generated by ETC's because they export large volumes of products from many sources at lower per-unit costs through established networks of overseas offices, transportation, insurance, and warehouses.

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[9] Public Law 98-369, approved July 18, 1984.

[10] Public Law 97-290, approved October 8, 1982, 15 U.S.C. 4001-4003, 12 U.S.C. 1841-1843, 15 U.S.C. 4011-4021.

The Export Trading Company Act of 1982 is intended to increase U.S. exports of goods and services by small- and medium-size businesses and encourage the formation of ETC's primarily by removing two impediments: (1) restrictions on trade financing and (2) uncertainty about the application of U.S. antitrust laws to export trade. The Webb-Pomerene Act of 1918 [11] permitted U.S. firms to form export associations, but did not include trade in services and did not provide the kind of certainty from antitrust prosecution that encouraged ETC formation. U.S. banking laws have traditionally imposed strict separation between banks and commercial enterprises, thus precluding banking participation in ETC's.

Bank participation

Title II of the ETC Act encourages banking organization participation in ETC's and, thus, the use of bank financial resources while limiting bank investment in such entities. It amends the Bank Holding Company Act to allow bank holding companies and bankers' banks to invest in one or more ETC's which meet the statutory definition under title II provided the total investments do not exceed 5 percent of consolidated bank capital and surplus. Banks may extend credits to ETC's providing such loans do not exceed 10 percent of the bank's capital and surplus. Banking organizations may own up to 100 percent equity in an ETC. Banks must notify the Federal Reserve Board (FRB) at least 60 days prior to investing and may proceed with the intended investment if the FRB raises no objection within that period.

Banks are generally subject to the collateral requirements in the Federal Reserve Act for loans to the ETC unless the FRB grants a waiver. It may not extend credit to the ETC or the ETC's customers on terms more favorable than those afforded similar borrowers in similar circumstances.

The ETC is intended to provide export trade services, not to be a manufacturer or agricultural producer except for incidental product modification (e.g., repackaging) necessary to facilitate foreign sales. It cannot act as principal agent or broker on risks located or activities performed in the United States. The ETC must be exclusively engaged in activities related to international trade and organized and operated principally for purposes of exporting U.S. goods and services.

Loan guarantee program

Title II of the ECT Act also establishes a program for loan guarantees by the Export-Import Bank of the United States (Eximbank) to ETC's or other exporters. The objective is to provide access to working capital loans that (1) otherwise would not have been provided without Eximbank assistance, and (2) without which the ETC or exporter would not be able to support exports of products that are unlikely to be sold abroad through other means. Guarantees cover only loans used for a specific export-related activity, are for 90 percent of the principal amount of the loan, and generally have a term of one to twelve months.

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[11] Public Law 65-126, ch. 50, approved April 10, 1918, 15 U.S.C. 61-65.

Antitrust provisions

Titles III and IV of the ETC Act address the problem of uncertainty about the application of U.S. antitrust laws to export trade, and are applicable to all exporters, not just ETCs. Title III provides certification procedures under which any person engaged in export trade can determine in advance whether proposed export conduct qualifies for specific antitrust protection. Title IV clarifies the jurisdictional reach of the Sherman Antitrust Act [12] and the Federal Trade Commission Act [13] to export trade.

A certification of review is issued by the Secretary of Commerce with the concurrence of the Department of Justice which protects its holder and the members identified in the certificate from private treble damage actions and government criminal and civil suits under U.S. Federal and state antitrust laws for the export conduct specified in the certificate. Any person who has been injured by the certified conduct, however, may bring a suit for actual damages under certain conditions.

To be certified, the proposed export trade, export trade activities, and methods of operation must meet the following four criteria:

1. It cannot result in substantial lessening of competition or restraint of trade in the United States, nor a substantial restraint of the export trade of any competitor;
2. It may not unreasonably enhance, stabilize, or depress prices within the United States;
3. It cannot constitute unfair methods of competition against competitors; and
4. It cannot include any act that may reasonably be expected to result in the sale or resale in the United States of the goods or services exported.

Export Financing

EXPORT-IMPORT BANK

The Export-Import Bank of the United States (Eximbank), an independent U.S. Government agency, has provided financing for exports of U.S. origin or manufacture for more than 50 years. Created in 1934 by Presidential Executive Order, the Bank was established on a statutory basis as a U.S. Government corporation in 1945 with passage of the Export-Import Bank Act.[14] Since then Eximbank's operating charter has been renewed periodically, most recently on October 15, 1986, when it received a 6-year extension until September 30, 1992.

The Eximbank is part of the Federal budget and each year the Congress sets limits on the Bank's authorization of loans, guarantees and insurance, and on the amount of administrative and entertainment expenses the Bank can issue. The Eximbank does not receive appropriations of taxpayers' funds from the Congress. Its lending needs are met by borrowings from the Treasury and Federal Financing Bank (at current market rates for government debt), fees and repayments on existing loans. The Bank is authorized to issue obligations for purchase by the Treasury, but the direct Treasury borrowing limit on such obligations outstanding at any one time cannot exceed $6 billion. The Eximbank cannot have outstanding at any one time loans, guarantees, and insurance which exceed an aggregate $40 billion.

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[12] Act of July 2, 1890, ch. 647, 15 U.S.C. 1-7.

[13] Public Law 63-203, ch. 311, approved September 26, 1914, 15 U.S.C. 41-51.

[14] Public Law 79-173, approved July 12, 1945, amended by Public Law 99-472, approved October 15, 1986, 12 U.S.C. 635.

The Bank was capitalized in 1945 with $1 billion subscribed by the United States. Since that time, it has supported more than $160 billion in U.S. export sales, paid dividends to the Treasury amounting to more than $2 billion, and produced retained earnings of more than $2 billion. The disparity between costs of Eximbank borrowings and the income from operations (despite the increases in rates within the loan limits allowable to remain competitive) has led to Eximbank losses in recent fiscal years. The Export-Import Bank Act amendments of 1986 included an authorization of $145 million in fiscal year 1987 to cover the subsidy cost of new direct loans, as a permanent addition to Bank capital, representing the subsidy cost of a $1.8 billion direct loan program.

The Bank is managed by a Board of Directors, including five full-time Directors appointed by the President and confirmed by the Senate, and two ex officio, non-voting members, the Secretary of Commerce and the U.S. Trade Representative. No more than three of the full-time Directors can be from the same party. The Directors serve for fixed, staggered 4-year terms.

Policy objectives and guidelines

The statutory objectives and purposes of the Eximbank are "to aid in financing and to facilitate exports and imports and the exchange of commodities and services between the United States or any of its territories or insular possessions and any foreign country or the agencies or nationals thereof." In recent years governments of other major exporting countries have subsidized their exporters through generous financing practices, such as the mixing of aid and commercial credits, offering of guarantees to offset the impact of inflation and foreign exchange risks, and the use of artificially low interest rates. An International Arrangement on Guidelines for Officially Supported Export Credits [15] was adopted in April 1978 by 22 major exporting nations under the auspices of the Organization for Economic Cooperation and Development, establishing minimum cash payments and interest rates, creating uniform maximum repayment periods, and defining other lending standards. More recent negotiations have significantly reduced the subsidy element in official export credits, and are seeking restrictions on the use of tied aid and partially untied aid credits for commercial purposes.

Under the most recent amendments passed in 1983 and 1986 to the Export-Import Bank Act of 1945, Eximbank has been directed as its primary mandate to offer financing at rates and terms which are fully competitive with foreign official export credit terms and consistent with international agreements. Terms and conditions do not need to be identical in all respects to those offered by foreign countries as long as the effect of such terms and conditions is to neutralize financing offered by Eximbank's counterpart. Eximbank has also been directed to establish a program of tied aid credit to counter the tied aid credits offered by other export credit agencies.

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[15] OECD Doc, No. TD/Consensus/78.4 (April 1978), revised TD/Consensus/82.41 (December 1982).

The Eximbank is required by statute to give full consideration to any potential adverse impact of a loan guarantee on U.S. employment, the competitive position of U.S. industry, and on the availability of materials in short supply. Amendments in 1986 include a prohibition on extension of direct credits or financial guarantees for establishing or expanding production of any commodity for export by a foreign country if the commodity is likely to be in world surplus or is expected to compete with U.S. production and will cause substantial injury to U.S. producers of that product, unless the injury is outweighed by benefits to U.S. industry and employment. Special consideration is given to exports that generate production and jobs in depressed areas and to strengthening the competitive position of U.S. exporters.

Certain other statutory restrictions also apply to Eximbank activities. For example, the Bank is prohibited or restricted from doing business with "Marxist-Leninist" countries (including the Soviet Union unless the President makes a national interest determination), South Africa, and Angola. The Bank must consider environmental effects abroad of certain projects, such as nuclear power projects and those involving highly toxic materials that may endanger public health.

Eximbank programs

Eximbank major program operations generally fall into two financing categories. The first is the buyer credit or project financing program, which provides direct loans at fixed interest rates and long terms (normally more than 5 years) to a public or private overseas buyer, and/or financial guarantees ensuring repayment of private source loans for heavy capital equipment and capital-intensive projects.

Project financing supports the exports of "turnkey" projects such as manufacturing, electric power and petrochemical plants, and large mining and construction operations. This program also covers heavy capital equipment exports such as commercial jet aircraft and locomotives. The largest part of direct project financing (in a typical year as much as 70 percent including aircraft or 90 percent excluding aircraft) assists in financing U.S. exports to creditworthy buyers in developing countries.

The second major program involves the supplier credit programs, which offer assistance through medium-term commercial bank guarantees, short- and medium-term export credit insurance, and the medium-term and small business credit programs. The supplier credit program is designed to support less costly transactions where repayment periods are either short-term (up to 6 months) or medium-term (from 6 months to 5 years).[16] Amendments in 1986 are intended to improve the competitiveness of and access to medium-term programs, and authorize the unrestricted transferability of insured or guaranteed medium and long-term obligations.

Several other programs have been introduced more recently: (1) services specifically designed for small exporters; (2) special facilities to support agricultural exports; (3) a lease guarantee program; (4) an overseas dealer/distributor program; (5) in special circumstances, guarantees of export credit denominated in convertible currencies other than U.S. dollars; (6) guarantees of loans to export trading companies; (7) multiple exporter risk protection coverage; (8) interest subsidy payments; and (9) a tied aid credit program.

Under the Export-Import Bank Amendments of 1978, the Bank is permitted to offer financing support to U.S. suppliers who would otherwise lose sales as a result of credit subsidies from foreign governments to support sales in the U.S. market by foreign producers. As amended in 1986, the program extends to credits irrespective of whether they are being offered by governments which are signatories to OECD export financing agreements.

The 1986 amendments authorize the Bank to make interest subsidy payments (the so-called I-Match program) to private lenders to subsidize export loans when below-market financing is required to compete with foreign subsidized financing. This I-Match authority, which is granted for 2 years, can become effective only if three conditions are met: first, the funds for the interest subsidy payments must be appropriated; second, loan guarantees accompanying these payments must not be scored as budget authority; and third, the Bank must have been authorized a direct loan budget of at least $700 million.

The 1986 amendments also established a Tied Aid Credit War Chest in the Bank, with $300 million authorized to be appropriated in each of fiscal years 1987 and 1988, to support efforts by the Secretary of the Treasury to negotiate a comprehensive agreement in the OECD to limit the trade-distorting practice of mixing foreign aid with export credit. The Chest may be used either to take markets away from other countries or to protect U.S. exports facing unfair mixed credit financing.

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[16] Under the commercial bank guarantee program, the Bank guarantees repayment of medium-term export obligations acquired by U.S. financial institutions from U.S. exporters. The purpose of the program is to facilitate the export of U.S. capital and quasi-capital goods through the U.S. commercial banking system. The Bank assumes commercial and political risks U.S. exporters or private financial institutions are unwilling or unable to undertake.

The export credit insurance program is operated in cooperation with a private association, the Foreign Credit Insurance Association, a group of U.S. property, casualty, and marine insurance companies. It sells and services export credit insurance policies which protect an exporter against non-payment for its foreign receivables and thereby encourages the exporter to offer competitive terms of repayment to foreign buyers.

Under the medium-term credit program, Eximbank makes a fixed interest rate loan commitment to a U.S. bank that is financing an export sale that faces subsidized, officially supported foreign export credit competition and lends its funds to the bank.

The small business credit program enables U.S. commercial banks to extend fixed-rate, medium-term export loans by providing standby assurance that the bank can borrow from the Eximbank against the outstanding value of a medium-term foreign debt obligation. Such fixed-rate financing is necessary to obtain a foreign order but commercial banks are reluctant to provide them on medium-term transactions because of fluctuations in their cost of funds.

Operating guidelines

The Export-Import Bank Act, as amended, states that the Bank "should supplement and encourage, and not compete with private capital" or with programs of the Commodity Credit Corporation. The Bank does not provide credit support for transactions which will proceed without its assistance. Generally, the Bank will not provide lines of credit, credit support for sales to developed or rich countries, sales of military goods or services, or credit for sales of older generation aircraft.

A cornerstone of Eximbank lending criteria since its inception and a statutory requirement is obtaining reasonable assurance of repayment. The Bank normally requires that overseas buyers make cash payments of at least 15 percent of the U.S. contract price. Guarantees of repayment may also be required either from a government institution in the buyer's country or from a major lending institution.

The percentage of Eximbank financing (generally between 65 percent and 85 percent) varies by type and case to case, depending particularly on the existence and nature of officially supported foreign competition. The Eximbank loans money at fixed interest rates which are reviewed quarterly by the Board of Directors and revised where appropriate within international Arrangement levels.

AGRICULTURE EXPORT SALES

To help finance sales of farm commodities abroad, the U.S. Department of Agriculture administers several concessional sales and credit programs. These include concessional credit programs under the authority of the Agricultural Trade Development and Assistance Act of 1954 as amended, commonly known as Public Law 480; [17] and concessional sales and commercial credit programs of the Commodity Credit Corporation (CCC) authorized by the Food for Peace Act of 1966.[18] In addition, the Food Security Act of 1985 [19] included a trade title designed to help reverse the decline in U.S. agriculture export sales, including authorization of an export payment-in-kind program.

PUBLIC LAW 480

Public Law 480 was extended for 5 years to December 31, 1990, by the Food Security Act of 1985. According to this Act, the purpose of Public Law 480 is "to expand international trade; to develop and expand export markets for United States agricultural commodities; to use the abundant agricultural productivity of the United States to combat hunger and malnutrition, and to encourage economic development in the developing countries, with particular emphasis on assistance to those countries that are determined to improve their own agricultural production; and to promote in other ways the foreign policy of the United States".

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[17] Public Law 83-480, approved July 10, 1954, 7 U.S.C. 1701-1736d.
[18] Public Law 89-808, approved November 11, 1966.
[19] Public Law 99-198, approved December 23, 1985.

Public Law 480 sales are generally limited to low-income countries. Title I of Public Law 480 authorizes sales of U.S. agricultural commodities on concessional credit terms. Under this title, the United States extends long-term dollar credits to eligible countries at very low interest rates with repayment periods varying from 20 to 40 years. Title III of the Act allows recipient countries to use the local currency proceeds from the domestic sale of commodities purchased under title I to promote their agricultural development, emphasizing aid to the rural poor. The money used to implement approved projects is considered as partial repayment of the title I debt to the United States. All sales agreements include provisions that safeguard normal U.S. trade channels and do not disrupt world prices or normal patterns of commercial trade with friendly countries.

COMMODITY CREDIT CORPORATION (CCC)

The CCC offers commercial credit programs designed to maintain and expand overseas markets for U.S. farm products. The largest program is called the Export Credit Guarantee Program (GSM-102). CCC offers risk guarantees against defaults on payments due from foreign banks for privately financed agricultural export credit sales with terms of 3 years or less. Sources of defaults have included exchange controls, government actions, or bankruptcy of a private foreign bank. Under this program, repayment rates and terms of interest are set by U.S. banks.

Under a second program, the Export Credit Sales Program (GSM-15), the CCC provides the financing of U.S. agricultural exports for a maximum period of 3 years. The usual financing period is 12 months. The CCC acts as an intermediary between the U.S. exporter and the foreign buyer by extending a line of credit to the foreign purchaser and making an offsetting direct payment to the U.S. exporter. Interest rates are normally above CCC's current borrowing cost from the U.S. Treasury.

Additional CCC authorities include the Direct Sales Program, which authorizes CCC to sell CCC-owned commodities at negotiated prices to voluntary agencies or on a government-to-government basis when those commodities are to be used for emergencies or other restricted uses; authority to barter surplus agricultural commodities for goods and services needed by the U.S. Government; and two nonfunctioning intermediate credit sales programs.

FOOD SECURITY ACT OF 1985

In addition to lowering price supports on major export commodities to make U.S. products more price-competitive in world markets, the Food Security Act of 1985 also contains a comprehensive trade title designed to help boost declining export levels. Provisions basically continue preexisting agricultural export credit and other promotion programs. However, Congress increased its voice in how these programs are implemented by mandating certain programs and program funding levels.

The trade title of the 1985 farm act, as amended by the Food Security Improvement Act of 1986,[20] requires at least $5 billion annually in short-term (6 to 36 months) credit guarantees; sets a minimum of $500 million annually in fiscal years 1986–1988 and a maximum of $1 billion in fiscal year 1989 for intermediate credit guarantees (3 to 10 years); mandates $110 million in fiscal years 1986–1988 and $325 million in fiscal years 1989–1990 in cash or surplus commodities for direct export credits targeted to counter unfair foreign trading practices; and mandates the export sale of at least 150,000 tons of CCC dairy products annually. The Act also reauthorizes the export credit revolving fund; directs the Department of Agriculture to test a barter program with at least two countries to obtain strategic materials; and requires the designation of a Presidential Special Assistant for Agriculture Trade and Aid.

The trade title of the 1985 agriculture legislation also mandates an export payment-in-kind (PIK) program using $2 billion worth of surplus commodities over 3 years to counter unfair foreign trade practices and to make U.S. products more competitive. These moneys must be used in equal amounts over 3 years, and at least 15 percent of the program must be devoted to meat and poultry product exports. The Department of Agriculture had been operating such a program since mid-May 1985.

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[20] Public Law 99-260, approved March 20, 1986

Chapter 5: AUTHORITIES RELATING TO POLITICAL OR ECONOMIC SECURITY

International Emergency Economic Powers Act

In 1977 Congress passed the International Emergency Economic Powers Act (IEEPA).[1] The Act grants the President emergency authority to regulate foreign exchange transactions, transfer of audit or payments between banking insitutions where a foreign interest is involved, import or export of currencies or securities, and to control or freeze property transactions where a foreign interest is involved. The President may exercise this authority only to respond to an "unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy or economy of the United States." President Reagan also invoked IEEPA to impose an embargo on imports from Nicaragua under Executive Order 12513, issued on May 1, 1985.

In order to subject peacetime regulation of international economic transactions to closer congressional scrutiny, IEEPA removed from the Trading With the Enemy Act [2] the broad authority of the President to control economic transactions during national emergencies. The IEEPA instead conferred upon the President limited authority to exercise controls on international economic transactions during national emergencies, and established procedures to govern the use of those authorities. IEEPA was invoked as the authority for imposing export controls under certain circumstances during the lapse of the Export Administration Act of 1979 during the 98th Congress.[3]

The international emergency economic authorities granted to the President under IEEPA broadly parallel section 5(b) of the Trading With the Enemy Act, except for the powers to vest foreign property, to regulate purely domestic transactions, to regulate gold or bullion, and to seize records. These powers, which are removed from Presidential peacetime authority, are retained only in time of war under the Trading With the Enemy Act. The economic sanctions that may be imposed under IEEPA, however, remain extensive. The President may "by means of instructions, licenses, or otherwise . . . investigate, regulate, prevent, or prohibit" virtually all aspects of foreign trade, from the transfer of exchange or credit to the import or export of currency and goods. The only international transactions exempted from this control authority are certain personal communications and charitable donations of necessities.

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[1] Public Law 95-223, approved December 28, 1977, 91 Stat. 1625, 50 U.S.C. 1701-1706.

[2] 40 Stat. 411, 50 App. U.S.C. 1-44. See Discussion of Trading With the Enemy Act, infra.

[3] Two bills (H.R. 3231 and S. 979) to renew the Export Administration Act of 1979 were passed by the House and Senate in the 98th Congress, but the conference committee was unable to resolve differences between the bills, and therefore the Act expired in March 1984. The Act was renewed on July 12, 1985 under Public Law 99-64.

IEEPA requires the President to consult with Congress whenever possible before declaring a national emergency. Once a national emergency is in effect, the President is required to submit to Congress a report explaining and justifying his actions and designating the countries against which such actions are to be taken. The President is also required to update the report every 6 months while the emergency is in effect.

Application

Both President Carter and President Reagan have exercised authority under IEEPA in connection with the taking of American hostages in Iran. In response to the seizure of personnel at the American embassy in Tehran, President Carter, pursuant to IEEPA, declared a national emergency on November 14, 1979. In conjunction with the national emergency, President Carter imposed a freeze on Iranian assets, blocking the removal of "all property and interests in property of the Government of Iran its instrumentalities and controlled entities and the Central Bank of Iran, which are or become subject to the jurisdiction of the United States or which are or come within the possession or control of persons subject to the jurisdiction of the United States."[4]

President Reagan has also invoked his authority under IEEPA to continue administering export controls on two occasions. The Export Administration Act of 1979 (EAA),[5] which was due to expire September 30, 1983, was temporarily extended through October 15, 1983.[6] On October 15, 1983 the EAA expired and the President extended the regulations issued under it by using authority of the IEEPA.[7] The Congress subsequently extended the EAA through February 29, 1984,[8] and President Reagan rescinded his action under emergency authority.[9] The EAA was extended for the final time until March 30, 1984,[10] and expired at that time. On March 1, 1984, the President again extended the export administration regulations under authority of the IEEPA pending resolution of House-Senate differences on legislation reauthorizing the Export Administration Act.[11] The conference was not able to reach agreement, however, and the 98th Congress adjourned on October 12, 1984, without having reauthorized the EAA. The IEEPA, meanwhile, continued to be invoked as the legal authority for regulations administering export controls until the EAA was reauthorized on July 12, 1985.

Trading With the Enemy Act

The Trading With the Enemy Act[12] prohibits trade with any enemy or ally of an enemy during time of war. From enactment in

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[4] Exec. Order No. 12170, 44 Fed. Reg. 65279.

[5] Public Law 96-72, approved September 29, 1979, 50 App. U.S.C. 2401-2420.

[6] Public Law 98-108, approved October 1, 1983.

[7] Exec. Order No. 12444, October 14, 1983.

[8] Public Law 98-207, approved December 5, 1983.

[9] Exec. Order No. 12451, December 20, 1983.

[10] Public Law 98-222, approved February 29, 1984.

[11] In April 1984, House and Senate conferees began meeting to resolve differences between the House bill (H.R. 3231) and the Senate bill (S. 979).

[12] Public Law 65-91, approved October 6, 1917, ch. 106, 40 Stat. 411, 50 App. U.S.C. 1-44.

1917 until 1977, the scope of the authority granted to the President under this Act was expanded to provide the statutory basis for control of domestic as well as international financial transactions and was not restricted to trading with "the enemy." In response to the use of the Act's authority under section 5(b) during peacetime for domestic purposes that were often unrelated to a preexisting declared state of emergency, Congress amended the Act in 1977. In 1977 Congress removed from the Trading With the Enemy Act the authority of the President to control economic transactions during peacetime emergencies.[13] Similar authorities, though more limited in scope and subject to the accountability limitations of the National Emergency Act of 1977,[14] were conferred upon the President by the International Emergency Economic Powers Act.[15] Presidential authority during wartime to regulate and control foreign transactions and property interests were retained under the Trading With the Enemy Act. In addition, the 1977 legislation authorized the continuation of various foreign policy controls implemented under the Trading With the Enemy Act, such as trade embargoes and foreign assets control.[16] The retention of such existing controls, however, was made subject to 1-year extensions conditioned upon a Presidential determination that the extension is in the national interest.

Background

The Trading With the Enemy Act was passed in 1917 "to define, regulate, and punish trading with the enemy". The Act was designed to provide a set of authorities for use by the President in time of war declared by Congress. In its original 19 sections, the Trading With the Enemy Act provided general prohibitions against trading with the enemy; authorized the President to regulate and prohibit international economic transactions by means of license or otherwise; established an office to administer U.S.-held foreign property; and set up procedures for claims to such property by nonenemy persons, among other provisions. The original 1917 Act appeared not to authorize the control of domestic transactions and limited its use to wartime exigencies.

Over the years, through use and amendment of section 5(b), the basic authorizing provision, the scope of Presidential actions under the Trading With the Enemy Act was greatly expanded. First, the Act was expanded to control domestic as well as international transactions. Second, the authorities of the Act were used to apply to presidentially declared periods of "national emergency" as well as war declared by Congress. From 1933, when Congress retroactively approved President Roosevelt's declaration of a national banking emergency by expanding the use of section 5(b) to include national emergencies, until 1977, when Congress amended section

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[13] Public Law 95-223, title I, approved December 28, 1977.

[14] The National Emergency Act of 1977 provided a statutory role for Congress in the declaration and termination of national emergencies. Public Law 94-412, 90 Stat. 1255, 50 U.S.C. 1601 et seq.

[15] See discussion of International Emergency Economic Powers Act, supra.

[16] July 1, 1977, the date of the application of the extension of existing authorities, was chosen to avoid the use of the Trading With the Enemy Act authority for extending export control regulations. See House Report No. 95-459.

5(b) by passage of the International Emergency Economic Powers Act, the President was authorized in time of war or national emergency to:

—regulate or prohibit any transaction in foreign exchange, any banking transfer, and the importing or exporting of money or securities;

—prohibit the withdrawal from the United States of any property in which any foreign country or national has an interest;

—vest, or take title to, any such property; and

—use such property in the interest and for the benefit of the United States.

The Trading With the Enemy Act did not provide a statement of findings and standards to guide the administration of section 5(b). There was no provision in the Act for congressional participation or review or for Presidential reporting at specified periods for actions undertaken under section 5(b). There was no fixed time period for terminating a state of emergency. Nor was there any practical constraint on limiting actions taken under emergency authority to measures related to the emergency.

Application

By 1977 a state of national emergency had been declared by the President on four occasions. In 1933 President Roosevelt declared a national emergency to close the banks temporarily and to issue emergency banking regulations. In 1950 President Truman declared a national emergency in connection with the Korean conflict. President Nixon declared a national emergency in 1970 to deal with the Post Office strike and another in 1971 based on the balance-of-payments crisis. Under the 1971 emergency, President Nixon initially imposed an import surcharge under a different authority but later invoked section 5(b) as an additional authority when the action was challenged in court.[17]

In response to these states of emergency, Presidents have used the powers of section 5(b) to deal with a number of varied events. In 1940 and 1941, President Roosevelt used section 5(b) to freeze the U.S.-held assets of the Axis powers and countries occupied by them to prevent their falling into the hands of the enemy powers. In August 1941, President Roosevelt, under section 5(b) authority, ordered the imposition of consumer credit controls by the Federal Reserve Board as an anti-inflationary measure. These executive uses by President Roosevelt were retroactively ratified by Congress.

The 1950 Korean emergency has been used in conjunction with section 5(b) powers for a wide range of controls, among them the imposition of a total embargo on transactions with China and North Korea in December 1950. In 1968, President Johnson, citing the authority of section 5(b) and the continued existence of the 1950 emergency, imposed foreign direct investment controls on U.S. investors. These controls remained in effect until they were eliminated by legislation in 1974. During the period 1969 through 1976, Presidents have invoked the 1950 and 1971 emergencies to extend temporarily export control regulations.

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[17] The U.S. Customs Court found the use of section 5(b) invalid, but this decision was later reversed on appeal. *U.S.* v. *Yoshida International*, 526 F.2d 560 (C.C.P.A. 1975).

Four sets of regulations controlling international transactions with specific countries are currently in effect pursuant to the authority of section 5(b) and the 1950 Korean national emergency. First, under the Foreign Assets Control Regulations,[18] all transactions between the United States and China, North Korea, Vietnam, and Cambodia are prohibited unless licensed by the Department of the Treasury. The regulations also block all assets of those countries held in the United States. The relaxation of U.S.-Chinese relations resulted in 1971 in changing these regulations by allowing general trade between the United States and China.

Second, the Cuban Assets Control Regulations,[19] based on section 5(b) as well as on foreign assistance legislation, impose a similar ban on virtually all transactions with Cuba.

Third, Transaction Control Regulations,[20] prohibiting any person within the United States [21] from engaging in any trade or trade-financing transaction involving transfer of strategic commodities from a foreign country to a Communist country, are also based on section 5(b) of the Trading With the Enemy Act.

Fourth, the wartime anti-Axis Foreign Funds Control Regulations,[22] issued under the authority of section 5(b), are still in effect. The regulations continue to block the assets of Czechoslovakia, East Germany, Estonia, Latvia, and Lithuania pending the settlement of claims by U.S. citizens for compensation of property confiscated after the war by the governments of those countries.

Narcotics Control Trade Act

The Drug Enforcement, Education, and Control Act of 1986 [23] contains a number of measures to respond to the serious problem of illegal drug smuggling into the United States and the growing threat of foreign sourced drug production. Among these measures are revisions to many basic customs laws to deter illegal drug imports and to increase enforcement capabilities of the U.S. Customs Service against drug traffic.

Title IX of the Act amends the Trade Act of 1974 (P.L. 93-618) by adding Title VIII, entitled the "Narcotics Control Trade Act," to create new authority for the President to take appropriate trade actions as of March 1 of each year against uncooperative major drug-producing or drug-transit countries. For each such country the President is required to deny to any or all of its products preferential tariff treatment under the Generalized System of Preferences, the Caribbean Basin Initiative, or any other law; to raise or impose duties of up to 50 percent ad valorem on any or all of its products; or to take any combination of these actions considered necessary to achieve the objectives of the Act.

Such sanctions would not apply if the President determines and certifies to the Congress, at the time the annual report required by section 481(e) of the Foreign Assistance Act of 1961 is submitted, that the country has cooperated fully with the United States or has taken adequate steps on its own to prevent illegal drugs from being sold illegally to U.S. Government personnel or their dependents or from being transported into the United States, and to prevent and punish the laundering of drug-related profits or monies. The Congress may disapprove the President's determination through enactment of a joint resolution within 30 legislative days. Actions remain in effect until the President submits a certification of cooperation and Congress does not enact a joint resolution of disapproval within 30 legislative days.

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[18] 31 CFR Part 500.
[19] 31 CFR Part 515.
[20] 31 CFR Part 505.
[21] Any "person within the United States" includes foreign subsidiaries of U.S. firms.
[22] 31 CFR Part 520.
[23] P.L. 99-570, approved October 27, 1986.

In addition, section 803 prohibits the President from allocating any quota for imports of sugar to any country which has a government involved in illegal drug trade or which is failing to cooperate with the United States in narcotics enforcement activities.

Chapter 6: TRADE NEGOTIATING AUTHORITY

Reciprocal Trade Agreement Authorities

Authority currently available to the President to negotiate and enter into reciprocal trade agreements with foreign governments consists primarily of authority in effect until January 3, 1988, under section 102 of the Trade Act of 1974 [1] to harmonize, reduce, or eliminate nontariff barriers or other trade-distorting measures, subject to Congressional approval of the trade agreements and implementing legislation under special procedures.

Authority for the President to negotiate and enter into trade agreements with foreign countries to modify tariffs and/or to proclaim changes in U.S. duties is limited to certain specific circumstances as described below: (1) tariff agreements negotiated and entered into under section 102 authority as amended by section 401 of the Trade and Tariff Act of 1984; [2] (2) authority to enter into a free trade area agreement with Israel under section 102 as amended by title IV of the Trade and Tariff Act (see discussion of U.S.-Israel Free Trade Area, infra.); (3) trade agreements entered into under section 123 of the Trade Act of 1974 [3] to grant new concessions as compensation for import relief actions taken under section 203 of that Act; (4) withdrawal, suspension, or modification of trade agreement obligations under section 125 of the Trade Act; [4] (5) trade agreements entered into under section 128 of the Trade Act as amended by section 308 of the Trade and Tariff Act of 1984 [5] concerning tariff treatment of certain semiconductor items; and (6) bilateral trade agreements with Communist countries providing for most-favored-nation treatment under certain conditions (for further discussion, see chapter 6).

GENERAL TARIFF AUTHORITY

Since enactment of the Reciprocal Trade Agreements Act of 1934 [6] the Congress periodically has delegated authority to the President to negotiate and to proclaim reductions in tariffs under reciprocal trade agreements, subject to specific conditions and limitations, without requiring further Congressional action. The most recent grant of such basic authority was contained in section 101 of the Trade Act of 1974, which served as the basis for negotiation of tariff reductions in the 1973-1979 Tokyo Round of Multilateral Trade Negotiations (MTN) under the General Agreement on Tariffs and Trade (GATT). The President's basic 5-year tariff negotiating and proclamation authority under section 101 expired on January 2, 1980. Section 124 of the Trade Act further provided the President, for another 2 years, residual authority to negotiate tariff adjustments within narrow limits and to correct discrepancies and anomalies resulting from the basic multilateral agreement. Section 124 expired on January 2, 1982, and has not been renewed. The President, therefore, currently does not have a general grant of authority to negotiate and proclaim changes in U.S. tariffs.

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[1] Public Law 93-618, approved January 3, 1975, 19 U.S.C. 2112.

[2] Public Law 98-573, title IV, sec. 401, approved October 30, 1984.

[3] Public Law 93-618, 19 U.S.C. 2133.

[4] Public Law 93-618, 19 U.S.C. 2135.

[5] Public Law 98-573, sec. 308.

[6] Public Law 73-316, ch. 474, approved June 12, 1934.

NONTARIFF BARRIER AUTHORITY

Trade negotiations prior to the Tokyo Round concentrated primarily on reducing or eliminating tariffs. Relatively little effort and progress was made to reduce nontariff barriers or other trade-distorting measures such as subsidies. Section 102 of the Trade Act of 1974 resulted from considerable concern about the growing importance and proliferation of such practices to the detriment of U.S. export trade and the need to develop new or more adequate international trading rules and mechanisms for their discipline. The purpose of section 102 was (1) to make clear the importance of reducing, eliminating, or harmonizing nontariff barriers and other trade-distorting measures through a Congressional policy mandate and specific legal authority for the President to negotiate reciprocal nontariff barrier trade agreements as the major focus of the MTN; (2) to expedite and reduce the uncertainties of the legislative process for approval and implementation of such trade agreements, thereby encouraging and facilitating negotiations with foreign governments; and (3) to increase and formalize the role of the Congress during the negotiating process as well as in developing domestic implementing legislation.

Section 102(a) contains a statement by the Congress on the adverse trade effects of nontariff barriers and other distorting measures and urges the President to take all appropriate and feasible steps within his power to harmonize, reduce, or eliminate such practices, including negotiation of trade agreements with foreign countries. Such agreements may also provide for the prohibition of, or limitations on, the use of such barriers or other distortions. Section 102 as amended by the 1984 Act applies to U.S. foreign direct investment as well as to trade in both goods and services.

Section 102(b) of the Trade Act authorized the President to enter into such trade agreements for 5 years until January 3, 1980. Section 1101 of the Trade Agreements Act of 1979 extended the authority for 8 years until January 3, 1988.

In contrast to traditional tariff proclamation authority, however, a nontariff barrier agreement negotiated under section 102 authority cannot enter into force for the United States and become binding as a matter of domestic law unless and until the President adheres to certain requirements for presentation to the Congress and implementing legislation approving the agreement and any changes in U.S. law is enacted into law. Sections 102(c)–(f) and sections 151–154 of the Trade Act prescribe the following procedures for Congressional approval:

1. Before entering into an agreement, the President must consult with the appropriate committees of jurisdiction over

subject matters affected by the agreement, especially regarding issues of implementation.

2. The President must notify the Congress of his intention to enter into the agreement 90 days before doing so, and thereafter promptly publish his intention in the Federal Register.

3. After entering into the agreement, the President must submit a copy of the agreement to the Congress, together with a draft implementing bill, a statement of any administrative action proposed to implement the agreement, an explanation of how the bill and statement change or affect existing law, and a statement of reasons why the agreement serves the interests of U.S. commerce and why the bill and proposed action are required and appropriate. An implementing bill must contain provisions approving the agreement and the statement of administrative action, and any amendments to current law or new authority required or appropriate to implement the agreement.

4. The implementing bill is introduced in both Houses of Congress on the day it is submitted by the President and referred to the committees of jurisdiction. The committees have 45 legislative days in which to report the bill; they are discharged automatically from further consideration after that period.

5. Each House votes on the bill within 15 legislative days after the measure has been received from the committees. A motion in the House to proceed to consideration of the implementing bill is privileged and not debatable. Amendments are not in order.

Although statutory, the legislative procedures were enacted as an exercise of the rulemaking powers of each House of Congress, and are part of each House's rules. The procedures may be changed in the same manner as any other rules.

The purpose of the approval process is to preserve the constitutional role and fulfill the legislative responsibility of the Congress with respect to agreements which often involve substantial changes in domestic laws. The consultation and notification requirements prior to entry into an agreement and introduction of an implementing bill ensure that Congressional views and recommendations with respect to provisions of the proposed agreement and possible changes in U.S. law or administrative practice are fully taken into account and any problems resolved in advance of formal Congressional action. At the same time, the procedure ensures certain and expeditious action on the results of the negotiation and on the implementing bill.

Section 102 authority was used successfully to approve the agreements concluded in the MTN and to implement changes in U.S. law under the Trade Agreements Act of 1979. That law extended the section 102 authority for an additional 8 years in order to enable the President to negotiate improvements or adjustments in existing agreements and to negotiate and enter into new agreements on other nontariff measures not dealt with in the MTN.

Section 2(c) of the 1979 Act requires the President to submit a draft bill and statement of any administrative action to the Congress whenever he determines it is necessary or appropriate to amend, repeal, or enact a statute to implement any requirement, amendment, or recommendation concerning an agreement. Procedures and requirements similar to sections 102 and 151–154 of the Trade Act of 1974 apply, except the President is required to consult at least 30 days in advance with the House Committee on Ways and Means and the Senate Committee on Finance and any other committees of jurisdiction on the subject matter and implementation.

TARIFF AUTHORITY UNDER SECTION 102

In conjunction with trade agreement authority granted the President to establish a free trade area with Israel, section 102 authority was amended by section 401 of the Trade and Tariff Act of 1984 to include trade agreements on tariffs under certain specific circumstances. Section 102(b) as amended authorizes the President to enter into a trade agreement providing for elimination or reduction of any duty with any country other than Israel if, in addition to the advance consultation and 90-day prior notification procedures of present law the following conditions are met: (1) the country requested negotiation of the agreement; (2) at least 60 legislative days in advance of the 90-day notice prior to entry into the agreement the President notifies and consults with the House Committee on Ways and Means and Senate Committee on Finance regarding the negotiation of the agreement; and (3) neither Committee has disapproved of the negotiations within that 60-day period. Proclamation of tariff changes is subject to Congressional approval of the trade agreement and implementing legislation under the same special sections 151–154 procedures applicable to section 102 agreements on nontariff barriers.

NEGOTIATING OBJECTIVES

Sections 102 through 108, and section 121 of the Trade Act of 1974 set forth various U.S. negotiating objectives for use of section 102 authority reflecting particular interests at the time of the MTN; section 305 of the Trade and Tariff Act of 1984 supplements and updates these objectives with respect to more recent major trade negotiating concerns. These negotiating objectives include:

—More open and equitable market access and the harmonization, reduction, or elimination of trade distorting devices, to the maximum extent feasible including agricultural as well as industrial barriers (section 103).

—To the maximum extent feasible in appropriate product sectors competitive opportunities for U.S. exports in developed countries equivalent to the opportunities afforded their imports in U.S. markets (section 104).

—Bilateral trade agreements providing for mutually advantageous economic benefits, if the President determines they will more effectively promote U.S. economic growth and employment (section 105).

—Trade agreements with developing countries to promote their economic growth and mutual market expansion (section 106).

—International rules and procedures on the use of temporary import safeguard measures (section 107).

—Trade agreements to assure U.S. access at reasonable prices to necessary supplies (section 108).

In addition, section 121 of the Trade Act of 1974 requires the President to take such action as necessary as soon as practicable to bring prior trade agreements and their application into conformity with principles promoting development of an open, nondiscriminatory, and fair world economic system, including specific revisions of the GATT, and to enter into trade agreements to the extent feasible to establish these principles. Any agreement involving any change in Federal law requires implementing legislation unless Congress has previously delegated authority. Trade agreements entered into under section 121 may be submitted for Congressional approval under the special sections 151–154 procedures.

Section 104A of the Trade Act, as added by section 305 of the Trade and Tariff Act of 1984, includes three further negotiating objectives under section 102 authority:

—With respect to trade in services, to reduce or eliminate barriers or other distortions (including denial of national treatment and restrictions on establishment and operation in foreign markets) and to develop internationally agreed rules.

—With respect to foreign direct investment, to reduce or eliminate barriers, including unreasonable barriers to establishment, and to develop internationally agreed rules.

—With respect to high technology products, to maximize openness in trade and investment; to eliminate or reduce foreign barriers to exports or investment; to achieve various commitments such as on foreign procurement, national treatment, and joint scientific cooperation, and effective minimum safeguards for acquisition and enforcement of intellectual property rights and the property value of data.

In addition, section 181 as added by the 1984 Act requires the USTR, through the interagency trade mechanism, to identify, analyze, and estimate the impact of acts, policies, and practices which constitute significant barriers to, or distortions of, U.S. exports of goods or services and foreign direct investment. The USTR must report the analysis and estimates annually to the House Committee on Ways and Means and Senate Committee on Finance with information on any action taken (or reasons for no action) to eliminate the measures, such as under section 301 or negotiations or consultations with foreign governments. The USTR must also keep the committees informed on trade policy priorities to expand market opportunities.

TRADE IN WINE

The Wine Equity and Export Expansion Act of 1984, title IX of the Tariff and Trade Act of 1984,[7] requires the U.S. Trade Representative (USTR) to designate major wine trading countries which are potentially significant markets for U.S. wine and which maintain tariff and nontariff barriers to, or other distortions of, U.S. wine trade. The President must direct the USTR to consult with each country to seek the reduction or elimination of these barriers or distortions. The President also is required to submit a report on each country to the House Committee on Ways and Means and the Senate Committee on Finance by November 30, 1985, containing: (1) a description of each trade barrier; (2) an assessment of whether each barrier is subject to an existing trade agreement; (3) action proposed or taken to reduce or eliminate the barriers, including action under the Trade Act of 1974; (4) reasons for not taking action; and (5) recommendations to Congress on any additional authority or action considered necessary and appropriate. If the President determines that action is appropriate to respond to any unfair tariff or nontariff barrier on U.S. wine, he must take all appropriate and feasible action under the Trade Act of 1974. The President is also encouraged to initiate a wine export promotion program in cooperation with winery representatives.

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[7] Public Law 98–573, title IX, approved October 30, 1984.

SPECIFIC TRADE AGREEMENT AUTHORITIES

Sections 123, 125, and 128 of the Trade Act of 1974, as amended by the Trade and Tariff Act of 1984, contain authorities to enter into and/or to proclaim changes in U.S. duties under trade agreements in certain specific limited circumstances.

Compensation agreement

Section 123 of the Trade Act authorizes the President to enter into trade agreements granting new concessions and to proclaim modifications or continuation of existing duties or duty-free treatment as he determines required or appropriate as compensation to foreign countries for restrictions imposed as import relief under section 203 of the Trade Act (see discussion of section 201 in chapter 2, supra). No duty reduction can exceed 30 percent of its existing level. The purpose of such concessions is to meet international obligations under the GATT to maintain the general level of reciprocal and mutually advantageous concessions with countries whose trade is adversely affected by import relief actions, and provide an alternative to the right of such countries under Article XIX of the GATT to take retaliatory action.

Termination and withdrawal authority

Section 125 of the Trade Act contains the traditional requirement that every trade agreement entered into is subject to termination or withdrawal within 3 years after its effective date, or upon 6 months advance notice thereafter. The President may terminate any proclamation at any time.

Section 125(c) provides the President explicit domestic legal authority to proclaim increased duties or other import restrictions as he deems necessary or appropriate to implement U.S. international trade agreement rights or obligations to withdraw, suspend, or modify any trade agreement concessions.

Section 125(d) authorizes the President to withdraw, suspend, or modify substantially equivalent trade agreement obligations and proclaim increased duties or other import restrictions in response to withdrawal, suspension, or modification by foreign countries of trade obligations benefitting the United States without granting adequate compensation (i.e., "self-compensation" authority). This authority was used in November 1982 by President Reagan to suspend most-favored-nation status for Poland indefinitely, based upon Poland's nonfulfillment of trade obligations undertaken in its accession to the GATT, and in view of increased repression of the Polish people by the martial law government.

No duty increase imposed under section 125(d) can exceed the higher of 50 percent or 20 percent ad valorem above the rate existing on January 1, 1975. Public hearings are required prior to taking any action, or promptly thereafter if expeditious action is necessary.

Section 125(e) requires duties or other import restrictions to remain in effect at negotiated levels for 1 year after U.S. termination of, or withdrawal from, a trade agreement, unless the President proclaims restoration of the previous level. The President must submit his recommendations to the Congress within 60 days as to the appropriate rates of duty on all affected articles. This provision prevents automatic, sudden "springbacks" to higher pre-agreement duties that could create serious economic impact.

High technology products

Section 128 of the Trade Act, as added by section 308 of the Trade and Tariff Act of 1984, authorizes the President to enter into bilateral or multilateral agreements necessary or appropriate to achieve the negotiating objectives under section 104A of the Act on high technology products and proclaim modification, elimination, or continuation of existing duty or duty-free treatment on specific semiconductor items during the 5-year period after date of enactment (i.e., until October 30, 1989) in order to implement such trade agreements.

PROCEDURAL REQUIREMENTS

Sections 131-135 of the Trade Act of 1974 require that certain procedures be followed in connection with any proposed trade agreement under sections 102, 123, or 128 authorities. These prenegotiation procedures require advice from the International Trade Commission on the probable economic effect of duty modifications on U.S. industries (section 131), advice from Executive branch agencies and other sources (section 132), public hearings (section 133), and advice from private sector advisory committees (section 135). In addition, Executive liaison with the Congress is required through Congressional designated official advisers to negotiations (section 161), transmittal of trade agreements (section 162), and annual reports on the trade agreements program and related matters (section 163). (See also discussion of Congress in chapter 7, infra).

Section 127 of the Trade Act of 1974 requires the reservation from any negotiations involving reduction or elimination of duties or other import restrictions of any article while it is subject to an import relief action under section 203 of that Act or to a national security action under section 232 of the Trade Expansion Act of 1962, or if the President determines that the national security would be impaired.

United States-Israel Free Trade Area

TITLE IV OF THE TRADE AND TARIFF ACT OF 1984

Title IV of the Trade and Tariff Act of 1984 [8] amends section 102 of the Trade Act of 1974 [9] to provide authority for the President to negotiate and enter into a trade agreement creating a free trade area (i.e., bilateral duty-free treatment of imports) between the United States and Israel. Proclamation of duty reductions or elimination is subject to Congressional approval of the trade agreement and implementing legislation under modified procedural requirements of sections 102 and 151-154 of the Trade Act.

Background

On November 29, 1983, President Reagan and Israeli Prime Minister Shamir agreed to proceed with bilateral negotiations on a United States-Israel free trade area, which the Israeli Government originally proposed in 1981. Negotiations by the U.S. Trade Representative began in mid-January 1984 on the elements of an agreement. A free trade area with Israel is the first such arrangement negotiated by the United States aside from the bilateral free trade arrangement with Canada in the automotive sector only.

Unlike the Caribbean Basin Initiative (CBI) (see discussion in chapter 1, supra), the United States-Israel arrangement would be two-way free trade area. Article XXIV of the General Agreement on Tariffs and Trade (GATT) permits free trade areas or customs unions as a deviation from the nondiscrimination, most-favored-nation principle of Article I if the agreement meets certain criteria. GATT-approved free trade areas (1) must eliminate duties and other restrictive measures on "substantially all" trade between the parties; and (2) duties and other regulations of commerce maintained by the parties may not be higher or more restrictive to the trade of third countries than the parties had in place prior to the agreement. An "interim agreement" can qualify under Article XXIV if it contains a plan and schedule for formation of the free trade area "within a reasonable length of time." Waivers may be sought under GATT provisions for free trade area proposals which do not meet the requirements.

Basic authority

Section 401 of the Trade and Tariff Act of 1984 amends section 102(b) of the Trade Act of 1974 to authorize the President to negotiate and enter into trade agreements providing for elimination or reduction of U.S. duties under sections 102 and 151-154 expedited Congressional approval procedures with *Israel only*. Section 102 of the Trade Act authorizes the President until January 3, 1988, to negotiate and enter into trade agreements to harmonize, reduce or eliminate nontariff barriers under the expedited Congressional approval procedures of sections 151-154 if (1) he consults in advance with the committees of jurisdiction concerning implementation; (2) gives the Congress at least 90 days prior notification of his intention to enter into the agreement; and (3) after entry submits a copy of the agreement together with a draft implementing bill, statement of administrative action, and a statement of how the agreement serves the U.S. interest and why the bill and proposed administrative action are required. Under sections 151–154, committees of jurisdiction are automatically discharged from consideration of the implementing bill after 45 days; each House has 15 days to act on the bill permitting no amendments. As amended by section 401, the advance consultation and 90-day prior notification requirements will not apply to tariff agreements with Israel.

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[8] Public Law 98-573, title IV, approved October 30, 1984.

[9] Public Law 93-618, approved January 3, 1975, 19 U.S.C. 2112.

Product eligibility

The product coverage of a free trade area and the schedule for eliminating duties on particular products will be part of the agreement itself. Section 401 does require that the agreement take fully into account any product that benefits from a discriminatory preferential tariff arrangement between Israel and a third country if the preference has been challenged by the United States under section 301 of the Trade Act and under the GATT (e.g., citrus with the European Communities).

Any trade agreement entered into under section 102(b) with Israel can provide for the reduction or elimination of duties only on articles that meet rule-of-origin requirements under section 402 similar to those under the CBI:

1. The article must be the growth, product or manufacture of Israel or foreign materials or components must be substantially transformed into a new or different article grown, produced, or manufactured in Israel. Related provisions are designated to prevent qualification of minor pass-through operations and transshipments;
2. The article must be imported directly from Israel into the U.S. customs territory; and
3. At least 35 percent of the total value of the article must consist of materials produced in Israel plus direct cost of processing operations performed in Israel, of which 15 percent may be U.S. content.

Application of import relief laws

Sections 403 and 406 of the 1984 Act make clear that existing trade laws available to domestic industries for relief from injurious import competition or unfair trade practices would continue to apply to imports under a trade agreement with Israel. As under the CBI legislation, the President may suspend the reduction or elimination of any duty under a trade agreement with Israel and proclaim a duty as import relief under section 203 of the Trade Act of 1974 or as a national security measure under section 232 of the Trade Expansion Act of 1962. Alternatively the President may establish a margin of preference or maintain the duty reduction or elimination on Israeli articles while imposing relief on imports from other sources. The International Trade Commission must state in its report to the President on import relief investigations involving Israeli articles covered in a trade agreement whether and to what extent its injury findings and recommended relief apply to imports from Israel.

Section 404 of the Trade and Tariff Act of 1984 applies a special procedure similar to that established under the CBI whereby petitions may be filed with the Secretary of Agriculture for emergency relief on perishable products from Israel pending action on a petition filed for normal import relief action under sections 201-203 of the Trade Act of 1974. The Secretary must determine and report to the President within 14 days with a recommendation for emergency action if he has reason to believe an agricultural perishable product from Israel is being imported in such increased quantities as to be a substantial cause or threat of serious injury to the U.S. industry. The President must determine within 7 days whether to take emergency action, which consists of withdrawing the reduction or elimination of duty and restoring the original rate pending final action on the import relief petition.

Most-Favored-Nation Treatment

Nondiscriminatory treatment of trading partners has been a basic element of international trade for several centuries, although its scope and application has changed as the complexity of trade among the nations has increased. Such treatment and the principle underlying it usually are referred to as the "most-favored-nation" (MFN) treatment or principle. MFN has its origin in international commercial agreements, whereby the signatories extend to each other treatment in trade matters which is no less favorable than that accorded to a nation which is the "most favored" in this respect. The effect of such treatment is that all countries to which it applies are "the most favored" ones; hence, all are treated equally. In the context of U.S. tariff legislation, MFN treatment means that the products of a country given such treatment are subject to lower rates of duty (found in column 1 of the Tariff Schedules of the United States), which have resulted from various rounds of reciprocal, multilateral tariff negotiations. Products from countries not eligible for MFN treatment under U.S. law are subject to higher rates of duty (found in column 2 of the TSUS), which represent the rates of duty applicable at the time the United States joined the GATT.

Prior to 1934, the United States accorded MFN treatment to its trading partners reciprocally only within the scope of commercial agreements containing an MFN clause. Section 350 of the Tariff Act of 1930, as added by the Trade Agreements Act of 1934, in effect required the nondiscriminatory application to all countries of tariff and trade concessions granted in bilateral agreements, whether or not those countries had agreements with the United States containing the MFN clause.

By becoming a signatory of the General Agreement on Tariffs and Trade (GATT), the United States, as of January 1, 1948, also accepted the basic obligation of GATT Article I to accord unconditional MFN status to all other signatories. Thus, MFN status is extended by the United States to foreign countries as a matter not only of U.S. domestic law but also as an international obligation.

The unconditional and unlimited MFN policy was changed after the enactment of section 5 of the Trade Agreements Extension Act of 1951,[10] which directed the President to withdraw or suspend MFN status of the Soviet Union and all countries under the control of international communism. This action was prompted by the outbreak of the Korean War and the support that these countries were giving to North Korea and China. As implemented, this directive was applied to all then-existing Communist countries except Yugoslavia.

In December 1960, President Eisenhower revoked the suspension of MFN status with respect to Poland. President Kennedy suspended MFN status with respect to Cuba in May 1962, pursuant to a new legislative requirement contained in section 401 of the Tariff Classification Act of 1962.[11] The Tariff Classification Act also enacted the new Tariff Schedules of the United States (TSUS), which, for the first time, included in a general headnote a current list of countries without MFN status. Section 231 of the Trade Expansion Act of 1962, as amended by section 402 of the Foreign Assistance Act of 1963, expanded the scope of the suspension of MFN status by applying it to "any country or area dominated by Communism," unless the President determined that the continued application of MFN status to Communist countries to which it was being applied at the time of the enactment of the Trade Expansion Act (i.e., to Poland and Yugoslavia) was in the national interest. The President made such a determination for both countries in March 1964.

The statutory provisions affecting the U.S. MFN policy and its practical implementation remained unchanged thereafter until enactment of the Trade Act of 1974, which contains the MFN provisions currently in force.

MFN principle under present law

The basic statute currently in force with respect to the MFN treatment of U.S. trading partners is section 126 of the Trade Act of 1974.[12] Section 126 contains the general requirement that any duty or other import restriction proclaimed to carry out any trade agreement apply on an MFN basis to products of all foreign countries, except as otherwise provided by law. The key provision embodying such exceptions with respect to tariff treatment is General Headnote 3(d) of the TSUS, which contains the list of countries denied MFN tariff status with respect to their exports to the United States. (See list under chapter 1.)

Other measures, most notably the Generalized System of Preferences, the Caribbean Basin Initiative, the United States-Israel Free Trade Area, and tariff treatment of least developed developing countries, provide specifically for application of preferential duty treatment for eligible countries and products under certain circumstances. This preferential tariff status grants terms which are more favorable than those granted to other countries which otherwise receive MFN treatment from the United States. (See separate sections and chapter 1.) With respect to nontariff measures, section 102(f) of the Trade Act of 1974 authorizes the President to recommend to the Congress that benefits and obligations of a particular agreement apply solely to the parties to that agreement or not apply uniformly to all parties, if such application is consistent with the agreement. The Agreement on Subsidies and Countervailing Duties, negotiated during the Tokyo Round of Multilateral Trade Negotiations, has been implemented by the United States on a non-MFN basis.

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[10] Public Law 49-50, ch. 141, approved June 16, 1951.

[11] Public Law 87-456, approved May 24, 1962.

[12] Public Law 93-618, approved January 3, 1975, 19 U.S.C. 2136.

MFN application to Communist countries

The Trade Act of 1974 repealed section 231 of the Trade Expansion Act of 1962. Section 401 of the Trade Act[13] presently regulates the extension of MFN tariff treatment to Communist countries. Section 401 directs the President to continue to deny MFN treatment to any country to which it was denied on the date of the enactment of the Trade Act (i.e., all Communist countries as of January 3, 1975, except Poland and Yugoslavia). Section 402 also denies MFN treatment (as well as access to U.S. Government credits, or credit or investment guarantees) to any "nonmarket economy" country ineligible for MFN treatment on the date of enactment of the Trade Act and which the President determines denies or seriously restricts or burdens its citizens' right to emigrate.

A country subject to the ban imposed by section 401 may gain MFN status only by fulfilling two basic conditions: (1) compliance with the requirements of the freedom-of-emigration provisions under section 402 of the Trade Act;[14] and (2) conclusion of a bilateral commercial agreement with the United States under section 405 of the Trade Act[15] providing reciprocal nondiscriminatory treatment.

The provisions of section 402, commonly referred to as the Jackson-Vanik amendment, allow a non-MFN, nonmarket economy country to receive MFN status (and access to U.S. financial facilities) only if the President determines that it permits free and unrestricted emigration of its citizens. Alternatively, the President may waive the requirements for full compliance of the particular country with the Jackson-Vanik requirements, if he determines that such waiver will substantially promote the objectives of the freedom-of-emigration provisions and if he has received assurances that the emigration practices of the country will henceforth lead substantially to the achievements of those objectives.

The President's waiver authority must be renewed annually. The renewal procedure under section 402(d)(5) requires the President to submit to the Congress a recommendation for a 12-month extension of the waiver authority within 30 days prior to its expiration, together with his reasons for the recommendation and a determination with respect to each country for which a waiver is in effect that the continuation of the waiver will substantially promote the objectives of the freedom-of-emigration provision.

Under the terms of the 1974 Act, the extension of the waiver authority for an additional 12-month period is automatic unless either House of Congress adopts, within 60 days after the expiration of the previous authority period, a resolution disapproving such extension either generally or with respect to a specific country. The adoption of such resolution would immediately rescind the waiver authority (and with it the grant of the MFN status) with respect to countries covered by the resolution. The constitutionality of this veto provision, however, is questionable in light of the decision of the U.S. Supreme Court on June 23, 1983, striking down a legislative veto in *Immigration and Naturalization Service* v. *Chadha*.

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[13] 19 U.S.C. 2431.
[14] 19 U.S.C. 2432.
[15] 19 U.S.C. 2435.

In addition to being contingent on compliance with the Jackson-Vanik requirements, Presidential authority to proclaim extension of MFN status to a country excluded under section 401 is subject and limited to the effective period of U.S. obligations under a bilateral commercial agreement between the United States and the country involved. Sections 404 and 405 of the Trade Act authorized the President to conclude such agreements, which must contain various provisions as prescribed by the statute concerning safeguards against disruptive imports, intellectual property rights, trade promotion, and consultations. Agreements and implementing proclamations can take effect only if Congress adopts a concurrent resolution under the expedited procedures of section 151 of the Trade Act. Agreements may remain in force for no more than 3 years, renewable for additional 3-year periods (without any Congressional approval) if past operation has been found satisfactory.

With the exception of Poland and Afghanistan, countries listed in General Headnote 3(d) of the TSUS are being denied MFN treatment as Communist countries pursuant to the requirements of section 5 of the Trade Agreements Act of 1951, section 231 of the Trade Expansion Act of 1962 and section 401 of the Trade Act of 1974. Poland is exempt from the denial under section 401, but its unconditional MFN status was suspended indefinitely by Presidential proclamation effective November 1, 1982, under the authority of section 125(d) of the Trade Act. MFN status for Afghanistan was suspended by Presidential proclamation effective February 14, 1986, under the authority provided by section 118 of Continuing Appropriations for Fiscal Year 1986.[16]

Presidential waiver authority of the emigration provisions has been extended annually since 1976. The waiver authority and the authority to conclude bilateral trade agreements and grant MFN status has, thus far, been used in three instances, following Congressional approval by concurrent resolution. MFN treatment has been extended to Romania effective August 3, 1975, to Hungary effective July 7, 1978, and to the People's Republic of China effective February 1, 1980. All three underlying bilateral agreements were extended, when appropriate, for additional 3-year periods by Presidential determinations of their satisfactory operation, and are still in effect.

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[16] Public Law 99-190, approved December 19, 1985.

Chapter 7: ORGANIZATION OF TRADE POLICY FUNCTIONS

Congress

The role of the Congress in trade derives from its powers under the Constitution to regulate foreign commerce and to lay and collect duties (see Introduction). Consequently, the trade agreements program and application of duties or other import restrictions are based upon and limited to specific legislation or authorities delegated by the Congress. In order to ensure proper implementation of these laws and authorities in accordance with legislative intent, Congress has included various statutory requirements in the trade laws to limit their application, to ensure Congressional oversight of their implementation, and to fulfill its responsibility for legislating any necessary or appropriate changes in U.S. laws.

More specifically, for example, periodic delegations of authority by the Congress to the President to proclaim changes in U.S. tariff treatment in the context of trade agreements has been limited in scope and periods of time, and use of the authority subject to certain prenegotiation procedures to protect domestic interests. On the other hand, Congress has granted Federal agencies permanent authorities to administer certain laws and programs, such as trade remedy laws or trade adjustment assistance, under certain specific guidelines and subject to congressional oversight, including appropriations.

Specific statutory roles of the Congress became formalized under the Trade Act of 1974 with the grant of authority to the President under section 102 to enter into trade agreements affecting U.S. laws other than traditional changes in tariff treatment. In authorizing implementation through an expedited, no amendment procedure, Congress ensured its role through statutory consultation and notification procedures prior to submission of a draft implementing bill by the Executive.

Section 161 of the Trade Act provides for appointment at the beginning of each session of Congress of five official Congressional advisers by the Speaker of the House from the Committee on Ways and Means and five official advisers by the President of the Senate from the Committee on Finance to U.S. delegations to international negotiating sessions on trade agreements. The U.S. Trade Representative must keep each adviser and designated committee staff members informed of U.S. objectives and the status of negotiations and of any changes which may be recommended in U.S. laws. Section 162 requires transmission of any trade agreements to the Congress.

Section 163 requires annual reports from the President and from the International Trade Commission (ITC) to keep the Congress informed regarding actions taken under the various trade laws and programs. Additional reports are required on specific aspects of various authorities (e.g., from the ITC on the domestic economic impact of the Caribbean Basin Initiative).

Finally, Congress has maintained its institutional role with the Executive by requiring the USTR to advise the Congress as well as the President on trade policy developments, through requests to the ITC for studies and analyses under section 332 of the Tariff Act of 1930 of various current trade issues, and through its power to authorize and appropriate funds for the functions of major trade agencies.

Executive Branch

INTERAGENCY TRADE PROCESS

Trade policy is a major element of U.S. economic and foreign policy. A decision to raise or lower tariffs, to impose import quotas, or to take other trade policy actions affects both domestic and foreign interests. In light of the far-reaching effects of trade policy decision, a large number of U.S. Government agencies have a role to play in the development of policy. Various interagency coordinating mechanisms have been used for bringing together conflicting views and interests and resolving them so that there can be a consistent and balanced national trade policy.

Until the late 1950's, the Department of State was the major initiator and coordinator of international trade policy. The Secretary of State chaired the interagency Trade Agreements Committee which originally included eight agencies: the Departments of State, Agriculture, Commerce, and Treasury, the Tariff Commission, the Agricultural Adjustment Administration, the National Recovery Administration, and the Office of the Special Advisor to the President on Foreign Trade.

Congress authorized the President under section 242 of the Trade Expansion Act of 1962 [1] to establish a new interagency trade organization to carry out the following functions: (1) make recommendations to the President on basic policy issues arising in the administration of the trade agreements program; (2) make recommendations to the President on tariff actions; (3) advise the President on import relief actions; and (4) perform other functions with respect to the trade agreements program as the President may from time to time designate. Under this authority, President Kennedy established the Trade Expansion Act Advisory Committee.[2] The Committee was chaired by the Special Representative for Trade Negotiations. The other members were the Secretaries of State, Treasury, Defense, Interior, Agriculture, Commerce, and Labor.

The Trade Agreements Committee was replaced by the Trade Policy Committee (TPC) in 1975.[3] The TPC performs the same functions authorized by section 242 of the 1962 Trade Act. Two subordinate coordinating groups, the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC), were subsequently created by the authority of the Special Representative.[4]

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[1] 19 U.S.C. 1801.

[2] Exec. Order 11075, January 15, 1963, 28 Fed. Reg. 473.

[3] Exec. Order 11846, March 27, 1975, 40 Fed. Reg. 14291.

[4] 40 Fed Reg. 18419, April 28, 1975.

This three-tiered interagency trade organization is chaired and administered by the United States Trade Representative (USTR). Member agencies consist of the Departments of Agriculture, Commerce, Defense, Justice, Energy, Interior, Labor, State, Transportation, and Treasury, the Office of Management and Budget, the Council of Economic Advisors, the National Security Council, and the International Development Cooperation Agency.

The TPSC is the working level interagency group, with members drawn from the office-director level of member agencies. Over 30 subcommittees and task forces support the work of the TPSC. In the absence of consensus at the TPSC level or in the case of particularly significant policy matters, issues are referred to the Assistant Secretary-level TPRG. Disagreements at the Assistant Secretary-level are referred to the TPC for Cabinet-level review. When Presidential trade policy decisions are needed, the Chairman (USTR) submits the recommendations and advice of the Committee to the President.[5]

The Reagan administration has created administratively various additional interagency mechanisms to coordinate trade and, more generally, international economic policy and domestic policy issues. Most recently, on April 11, 1985, President Reagan announced the creation of two Cabinet-level bodies—the Economic Policy Council (EPC) and the Domestic Policy Council—replacing the seven preexisting Cabinet Councils and the Senior Interagency Group—International Economic Policy. The President chairs both Councils.

The function of the EPC is to advise the President on all aspects of national and international economic policy, and to oversee the coordination and implementation of the Administration's economic policies.

The EPC is composed of the Secretaries of State, Treasury, Agriculture, Commerce, and Labor, the Director of the Office of Management and Budget, the USTR, and the Chairman of the Council of Economic Advisors. The heads of the national security community departments and agencies and the Assistant to the President for National Security Affairs participate in Council meetings whenever international policy or budget matters are discussed. The heads of nonmember departments and agencies are invited to participate whenever matters affecting their organizations are on the agenda. The Vice President and White House Chief of Staff serve as ex-officio members. The Secretary of the Treasury serves as Chairman Pro-Tempore.

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Section 241 of the Trade Expansion Act of 1962 established the Office of the Special Representative for Trade Negotiations.[8] Congress' stated purpose for creating the position was to provide better balance between competing domestic and international interests in the formulation of U.S. trade policy and negotiations. The Special Trade Representative (STR), whose rank was ambassador extraordinary and plenipotentiary, was to serve as the chief U.S. representative for negotiations conducted under authority of the Act and for other trade negotiations authorized by the President.

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[5] The Senate Report on Reorganization Plan No. 3 stated that "the USTR has the authority to take decisions even in the absence of consensus or compromise among agencies, and to enforce his decisions on other agencies, subject of course to the ultimate decision-making role of the President." Senate Report 96–402, at p. 15.

[6] [Omitted]

[7] [Omitted]

[8] Public Law 87–794, approved October 11, 1962, 19 USC 1801.

Various Executive orders issued by President Kennedy in 1963 established an Office of the Special Trade Representative and provided for the appointment of two Deputy Special Representatives for Trade Negotiations. These deputies, one based in Washington, D.C., and the other in Geneva, were assigned major responsibilities for the conduct of the 1963-67 multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT), commonly known as the Kennedy Round.

Section 141 of the Trade Act of 1974 [9] called for establishment of the office as an agency within the Executive Office of the President and expanded STR's duties to include responsibility for the trade agreements program under the Tariff Act of 1930, the Trade Expansion Act of 1962 and the Trade Act of 1974. Other duties and responsibilities also were assigned by the 1974 Trade Act and by Executive Order 11846 of March 27, 1975, as amended. The position of STR was raised to Cabinet level with the rank of ambassador; the STR was made directly responsible to the President and Congress.

Reorganization Plan No. 3 of 1979, implemented by Executive Order 12188 of January 4, 1980,[10] authorized the most recent changes in the trade responsibilities of the STR. Plan No. 3 redesignated the Office of the Special Representative for Trade Negotiations as the Office of the United States Trade Representative (USTR). The new name reflects the plan's intent for the Trade Representative to have overall responsibility, on a permanent basis for developing and coordinating the implementation of U.S. trade policy.

More specifically, the Office of United States Trade Representative, with the advice of the interagency Trade Policy Committee and its subordinate committees,[11] has primary responsibility for conducting trade negotiations and for developing international trade policy and coordinating its implementation in the following areas:

(1) matters concerning the GATT (as the chief U.S. representative to the GATT) including implementation of trade agreements, trade and commodity matters dealt with by multilateral organizations, and protection of U.S. rights under international trade and commodity agreements;

(2) expansion of U.S. exports;

(3) policy research on international trade, commodity, and direct investment matters;

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[9] Public Law 93-618, approved January 3, 1975, 19 USC 2171.

[10] 44 Fed. Reg. 69273.

[11] The Trade Policy Committee and its subordinate committees were established under section 242 of the Trade Expansion Act of 1962. USTR chairs the committees.

(4) to the extent permitted by law, overall United States policy with regard to unfair trade practices;

(5) bilateral trade and commodity issues, including East-West trade matters;

(6) international trade issues involving energy; and

(7) trade-related direct investment matters.

USTR is responsible by statute for conducting investigations and making recommendations to the President under section 310 of the Trade Act of 1974 (see separate section). Section 306(c) of the Trade and Tariff Act of 1984 specifies that USTR, through the interagency organization, is responsible for developing and coordinating U.S. policies on trade in services.

The 1979 Reorganization Plan specified that the USTR is the President's principal adviser and chief spokesman on trade, including advice on the impact of international trade on other U.S. Government policies. The USTR also became Vice Chairman of the Overseas Private Investment Corporation (OPIC), a nonvoting member of Export-Import Bank and a member of the National Advisory Committee on International Monetary and Financial Policies.

DEPARTMENT OF AGRICULTURE

The U.S. Department of Agriculture (USDA) was created by Act of Congress on May 15, 1862, and was administered by a Commissioner of Agriculture until 1889,[12] when the Department's responsibilities were expanded. At that time, the position of Commissioner was elevated to the rank of Secretary. Among the overall purposes of the Department are the improvement and maintenance of farm income and the expansion of foreign markets for U.S. agricultural products.

USDA is actively involved in U.S. trade policy formulation, to ensure that decisions in that area take into account their impact on U.S. agricultural interests. USDA also has direct responsibility for a variety of trade-related functions. Section 22 of the Agricultural Adjustment Act[13] charges the Secretary of Agriculture with advising the President on the effect of imports on USDA programs. Enforcement and administration of certain elements of cheese quotas and meat imports fall to the Secretary. The Trade Agreements Act of 1979 gives the Department responsibility for coordinating negotiations with foreign governments on standards-related matters in agricultural trade and for monitoring activities in that area.[14] The Agricultural Trade Act of 1978[15] authorized USDA to establish up to 25 Agricultural Trade Offices to assist U.S. exporters, trade groups, and state export marketing officials in their trade promotion efforts.

Most of USDA's international trade functions are administered by the Foreign Agricultural Service (FAS), which is supported by a network of agricultural attachés at many U.S. embassies, and analysts, marketing specialists, and negotiators based in the United States. FAS personnel supply and analyze data on foreign agricultural markets; operate a market development program; work to reduce foreign barriers to U.S. farm goods; and manage the Public Law 480 program and the Commodity Credit Corporation (CCC) Export Credit Sales Program.

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[12] 12 Stat. 387, 5 U.S.C. 511, 514, 516.

[13] 7 U.S.C. 624 (see discussion of section 22 in chapter 3, supra).

[14] 19 U.S.C. 2542.

[15] Public Law 95-501, title IV, section 401(l), approved October 21, 1978, 92 Stat. 1688, 7 U.S.C. 1765a.

The Department of Agriculture is a voting member of the Trade Policy Committee and of its subordinate committees.

DEPARTMENT OF COMMERCE

The Department of Commerce was established in 1903 as the Department of Commerce and Labor.[16] A 1913 act of Congress split the Department of Commerce and Labor into two separate departments.[17] The mandate of the Commerce Department originally was to promote the foreign and domestic commerce of the United States. In subsequent years, its authority was extended to other areas bearing on the economic and technological development of the country. The titles of the component units of the Department indicate the diversity of the agency's current programs and services: International Trade Administration, Economic Development Administration, Minority Business Development Agency, National Bureau of Standards, National Oceanic and Atmospheric Administration, Patent and Trademark Office, Bureau of the Census, Bureau of Economic Analysis, Bureau of Industrial Economics, National Technical Information Service, National Telecommunications and Information Administration, and the United States Travel and Tourism Administration.

The International Trade Administration (ITA), which was established by the Secretary of Commerce on January 2, 1980,[18] administers the Department's international trade responsibilities and activities as prescribed by Reorganization Plan No. 3 of 1979. The plan provides that the Commerce Department has "general operational responsibility for major nonagricultural international trade functions," as well as for any other functions assigned by law. Those include export development, commercial representation abroad, the administration of the antidumping and countervailing duty laws, export controls, trade adjustment assistance to firms and communities, research and analysis, and compliance with international trade agreements to which the United States is a party.

To foster U.S. exports, ITA maintains a wide range of informational and promotional programs. Some of the major informational programs are designed to match U.S. producers with overseas buyers and to provide them with accurate foreign market intelligence about export opportunities. In addition, ITA assists U.S. firms participating in international trade fairs. Through 47 district offices located in the United States and 120 posts located abroad, the ITA's U.S. and Foreign Commercial Services provide counseling and marketing assistance to U.S. exporters. ITA also has responsibility for promoting the formation of export trading companies and, with the concurrence of the Justice Department, certifying that export trading company petitions meet the required antitrust standards.

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[16] 32 Stat. 827, 5 U.S.C. 591.
[17] 37 Stat. 736, 15 U.S.C. 1501.
[18] 45 Fed. Reg. 11862, as amended by 46 Fed. Reg. 13537.

The ITA controls exports of commodities and technology for reasons of national security, foreign policy, and short supply, and issues export licenses in accordance with the export control regulations. Export control regulations are developed in consultation with other agencies, and some license applications require interagency review. The Department also investigates license violations and monitors compliance with export control laws.

Reorganization Plan No. 3 transferred the responsibility for administering the U.S. antidumping and countervailing duty laws from the Department of the Treasury to the Department of Commerce. The role of Commerce is to rule on allegations that imports from a particular country are subsidized or sold at less than fair value (i.e., dumped) and, in affirmative cases, determine the amount of the subsidy or dumping margin. The International Trade Commission determines whether subsidized or dumped imports have materially injured a U.S. industry (see discussion of antidumping and countervailing duty laws in chapter 2, supra).

The Department exercises other varied trade enforcement and administration responsibilities. In the event of a war or other national emergency, the Department is responsible for mobilizing U.S. industrial resources. As part of its industrial resources responsibilities, the Department administers section 232 of the Trade Expansion Act of 1962.[19]

In addition, the Department administers: U.S. laws which forbid U.S. firms to comply with foreign boycotts against countries friendly to the United States; the Foreign Trade Zones program which encourages processing and assembly of goods in the United States; the Trade Adjustment Assistance Program for firms, and several statutory import programs. Other important trade responsibilities include administration of the textile agreements program; providing staff support for trade negotiations; monitoring and implementing multilateral trade agreements; and providing statistical analysis and research on various elements of the U.S. international economic position, including the competitiveness of U.S. manufacturing and service industries. The Department of Commerce is a voting member of the Cabinet-level Trade Policy Committee (TPC), chaired by the U.S. Trade Representative, and of the TPC's subcabinet groups. The Secretary of Commerce also chairs the Cabinet Council on Commerce and Trade.

DEPARTMENT OF LABOR

The Department of Labor was established as the Department of Commerce and Labor in 1903[20] and was split into a separate agency in 1913.[21] The role of the Labor Department is to promote the overall welfare of U.S. wage earners.

The Deputy Under Secretary for International Affairs, who heads the Bureau of International Labor, assists in the formulation of international economic and trade policies affecting U.S. workers. The Department is a voting member of the Trade Policy Committee (TPC), chaired by the U.S. Trade Representative, and its subordinate committees. The Department conducts research on trade-related employment issues, helps represent the United States in international negotiations, before the International Labor Organization and in other international organizations. The Bureau is assisted in its efforts by labor attachés posted at many U.S. embassies overseas.

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[19] 48 Stat. 943, 19 U.S.C. 1351.

[20] 32 Stat. 827, 5 U.S.C. 591.

[21] 37 Stat. 736, 15 U.S.C. 1501.

The Labor Department, through the Employment and Training Administration, is responsible for administration of the Trade Adjustment Assistance (TAA) program for workers, under authority given by the Trade Act of 1974. (See discussion of TAA program in chapter 2, supra.) Among the Department's TAA duties are certification of workers for eligibility to apply for benefits and issuance of guidelines for administration of benefits at the State level.

Department of State

The Department of State, created by act of Congress in 1789, advises the President in the formulation and execution of foreign policy. The Department's primary objective is to promote the long-range security and well-being of the United States. In so doing, the Department plays a significant role in analyzing facts and making recommendations on policy and future actions on any issues that affect American interests overseas. In the formulation of U.S. trade policy, State's primary role is to provide a foreign policy perspective to interagency deliberations. State performs this task as a voting member of the Trade Policy Committee and its subordinate committees, the Cabinet Council on Commerce and Trade, and the Senior Intergovernmental Group on International Economic Policy.

The Department attaches high priority to trade, investment, and commodity issues because of their importance in U.S. foreign relations. Within the Department, the Under Secretary for Economic Affairs is principal advisor to the Secretary and Deputy Secretary in the formulation and conduct of foreign economic policy. The Bureau of Economic and Business Affairs has overall responsibility within the Department for formulating and implementing policy regarding foreign economic matters, including policies on foreign investment, natural resources and food, international trade, and international finance and development. State plays a major role in the formulation of U.S. policy in these areas and leads most U.S. delegations to international conferences or negotiations on investment and commodity issues.

Department of the Treasury and the U.S. Customs Service

The Department of the Treasury was created by act of Congress in 1789.[22] The Treasury Department's role and responsibilities have been broadened substantially by many subsequent acts and executive orders.

The Department of the Treasury has primary responsibility for formulation and administration of economic and financial policy;

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[22] 1 Stat. 65, 31 U.S.C. 1001.

tax policy; public debt management; various law enforcement functions (through the U.S. Secret Service; Bureau of Alcohol, Tobacco and Firearms; and the U.S. Customs Service); and the manufacture of coins and currency.

The Secretary serves as the principal economic advisor to the President. He chairs the interagency Cabinet Council on Economic Affairs, which reviews and formulates policies on a wide range of domestic and international economic matters. The Secretary serves as U.S. Governor of the International Monetary Fund, the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, and the African Development Fund. The Secretary also is co-chairman of a number of bilateral economic commissions with other countries. As Chairman of the National Advisory Council on International Monetary and Financial Policies, the Secretary or his delegate plays a key role in formulating and overseeing U.S. policies toward international lending institutions and U.S. aid and trade finance policies.

The Treasury's international responsibilities are carried out by the Assistant Secretary for International Affairs, who advises and assists the Secretary and the Under Secretary for Monetary Affairs. The Office of the Assistant Secretary is divided into groups responsible for international monetary affairs, developing nations, international trade and investment, and commodities and natural resources. Supporting staff offices analyze economic and financial policies in industrial and developing countries and support Treasury's attachés abroad; coordinate U.S. policies toward the International Monetary Fund, the World Bank and other international financial institutions; monitor developments in foreign exchange markets and coordinate (with the Federal Reserve) U.S. intervention in exchange markets; collect and analyze U.S. balance of payments data and other economic and financial data affecting the U.S. and world economic outlook; coordinate policies toward financing of trade and toward foreign investment in the United States and U.S. overseas investment; and conduct other functions.

The Treasury Department maintains an active involvement in U.S. trade policy to ensure that decisions in that area include a consideration of their impact on the U.S. economy. Treasury is a voting member of the Cabinet-level Trade Policy Committee (TPC), chaired by the U.S. Trade Representative, and of the TPC's subcabinet groups. Treasury also has responsibility for the U.S. Customs Service.

U.S. CUSTOMS SERVICE

The second act of Congress, dated July 4, 1789, authorized the collection of duties on imported goods, wares and merchandise. The fifth act of Congress, passed in July 31, 1789, established customs districts and authorized customs officers to collect import duties. On March 3, 1927, the Bureau of Customs was established as a separate agency under the Treasury Department.[23] The Bureau was redesignated the United States Customs Service on August 1, 1973.[24]

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[23] 44 Stat. 1381.

The Customs Service collects import duties and enforces more than 400 laws or regulations relating to international trade. Among the many responsibilities falling to Customs are assessing and collecting duties, excise taxes, penalties and other fees due on imported goods; interdicting and seizing illegally entered merchandise; processing persons, carriers, cargo and mail into and out of the United States; helping enforce U.S. laws against the transfer of certain technologies to Eastern European countries, laws on copyright, patent and trademark rights; and administering quotas and other import restrictions. The U.S. Customs Service maintains close ties with private business associations, international organizations, and foreign customs services.

U.S. International Trade Commission

The U.S. International Trade Commission (USITC) is an independent and quasi-judicial agency that conducts studies, reports, and investigations, and makes recommendations to the President and the Congress on a wide range of international trade issues. The agency was established on September 8, 1916 [24a] as the U.S. Tariff Commission. In 1974 the name was changed to the United States International Trade Commission by section 171 of the Trade Act of 1974.[25]

Commissioners appointed after January 9, 1975, are appointed by the President for nine-year terms, unless they are appointed to fill an unexpired term. They may not be reappointed. The Chairman and Vice Chairman are designated by the President for two-year terms, and successive Chairmen may not be of the same political party. Of the six commissioners, not more than three may be of the same political party.

The Commission has numerous responsibilities for advice, investigations, studies, and data collection and analysis which may be grouped into the following general areas: advice on trade negotiations; Generalized System of Preferences; import relief for domestic industries; East-West trade; investigations of injury caused by subsidized or dumped goods; import interference with agricultural programs; unfair practices in import trade; development of uniform statistical data; matters related to the U.S. tariff schedules; international trade studies; trade and tariff summaries. The ITC's specific responsibilities in these areas are discussed below.

Statutory authority for the Commission's responsibilities is provided primarily by the Tariff Act of 1930, the Agricultural Adjustment Act, the Trade Expansion Act of 1962, the Trade Act of 1974, the Trade Agreements Act of 1979, and the Trade and Tariff Act of 1984.

The Tariff Act of 1930 gives the Commission broad authority to conduct studies and investigations relating to the impact of international trade on U.S. industries. Various sections under title VII authorize the Commission to determine whether U.S. industries are materially injured by imports which benefit from subsidies or are priced below fair value.[26] If the Secretary of Commerce decides to suspend an antidumping or countervailing duty investigation upon reaching an agreement to eliminate the injury caused by the subsidized or dumped imports, the Commission is authorized to study whether or not the injury in fact is being eliminated. Section 337 of the Tariff Act also authorizes the ITC to investigate whether unfair methods of competition or unfair acts are being committed in the importation of goods into the United States.[27] The Commission is authorized to order actions to remedy any such violations, subject to Presidential disapproval.

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[24] Treasury Department Order 165-23, of April 4, 1973.

[24a] 39 Stat. 795.

[25] 19 U.S.C. 2231.

Upon the request of the President, the House Committee on Ways and Means, the Senate Committee on Finance, or on its own motion, the ITC conducts studies and investigations under section 332 of the Tariff Act of 1930 on a wide range of trade-related issues.[28] Public reports generally are issued following such studies and investigations. The ITC also publishes summaries outlining the types of products entering the United States, their importance in U.S. consumption, production, and trade, and other relevant information. The ITC also is required to establish and maintain statistics on U.S. trade and to work to develop an international commodity code for reporting trade statistics among countries.[29]

The Trade Expansion Act of 1962 and the Trade Act of 1974 expanded the duties of the ITC. Both laws require the Commission to review developments within an industry receiving import protection and to advise the President on the probable impact of reducing or eliminating the protection.[30]

The Trade Act of 1974 gives the Commission a Presidential advisory role on the probable domestic economic effects of trade concessions proposed during trade negotiations.[31] The ITC performs a similar advisory role in relation to duty reduction under the Generalized System of Preference.[32] Under section 201 of the 1974 Trade Act,[33] the Commission conducts investigations to determine whether increased imports are causing or threatening serious injury to the competing domestic industry and reports its findings and recommendations for relief to the President.

Sections 406 and 410 [34] of the 1974 Trade Act provide for ITC monitoring and investigation of various aspects of trade with nonmarket economies.

The Agricultural Adjustment Act [35] requires the ITC, upon the direction of the President, to investigate whether imports of agricultural products are interfering with programs of the Department of Agriculture and to present its findings and recommendations to the President.

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[26] Secs. 704, 734, and 751; 19 U.S.C. 1671c, 1673c, and 1675c.

[27] 19 U.S.C. 1337.

[28] 19 U.S.C. 1332.

[29] 19 U.S.C. 1484(e).

[30] 19 U.S.C. 1981, 2253.

[31] 19 U.S.C. 2151.

[32] 19 U.S.C. 2151, 2163.

[33] 19 U.S.C. 2251.

[34] 19 U.S.C. 2240, 2436.

[35] 7 U.S.C. 624.

Section 221 of the Trade and Tariff Act of 1984 established a Trade Remedy Assistance Office within the ITC to provided information on remedies and benefits available under U.S. trade laws and on the 74 procedures and filing dates for relief petitions.

Private Sector Advisory Committees

The first formal mechanism providing for ongoing advice from the private sector on international trade matters was authorized by the Trade Act of 1974.[36] In view of the positive contribution of the advisory committees to the negotiations of the Tokyo Round of Multilateral Trade Negotiations and to passage of the implementing legislation—the Trade Agreements Act of 1979—Congress provided for continuation of the advisory committee structure in the 1979 Act.[37] Congress also expanded the committee's responsibilities by authorizing them to provide advice on the priorities and direction of U.S. trade policy, in addition to their previous responsibilities.

The U.S. Trade Representative manages the advisory committees in cooperation with the Departments of Agriculture, Commerce, Labor, and other departments. The committee structure is three-tiered, with the most senior level represented by the Advisory Committee for Trade Negotiations (ACTN). The ACTN is a 45-member body composed of Presidentially-appointed representatives of government, labor, industry, agriculture, small business, service industries, retailers, consumer interests, and the general public. The group provides overall guidance on trade policy matters, including trade agreements and negotiations, and is chaired by a chairman elected by the committee. The group convenes at the call of the U.S. Trade Representative.

The second tier is made up of policy advisory committees representing specific sectors of the economy, whose role is to advise the government of the impact of various trade measures on their respective sectors.

The third tier is composed of sector advisory committees consisting of experts from various fields. Their role is to provide specific, technical information and advice on trade issues involving their particular sector. Members of the second and third tier are appointed by the U.S. Trade Representative and the Secretary of the relevant department or agency.

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[36] 19 U.S.C. 2155.
[37] 19 U.S.C. 2155.

PART II: COMPILATION OF U.S. TRADE STATUTES

Chapter 8: TARIFFS AND CUSTOMS LAWS

A. EXCERPTS FROM THE TARIFF SCHEDULES OF THE UNITED STATES (TSUS) RELATING TO SPECIAL DUTY TREATMENT

1. American goods returned (TSUS item 800.00)

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987)

SCHEDULE 8.—SPECIAL CLASSIFICATION PROVISIONS

Part 1.—Articles Exported and Returned

Item	Stat. suffix	Articles	Units of quantity	Rates of duty		
				1	Special	2

PART 1.—ARTICLES EXPORTED AND RETURNED

Part 1 headnotes:

1. In the absence of a specific provision to the contrary, the tariff status of an article is not affected by the fact it was previously imported into the customs territory of the United States and cleared through customs whether or not duty was paid upon such previous importation.
2. Any product of the United States which is returned after having been advanced in value or improved in condition abroad by any process of manufacture or other means, or any imported article which has been assembled abroad in whole or in part of products of the United States, shall be treated for the purposes of this Act as a foreign article, and, if subject to a duty which is wholly or partly ad valorem, shall be dutiable, except as otherwise prescribed in this part, on its full value determined in accordance with section 402 of this Act. If such product or such article is dutiable at a rate dependent upon its value, the value for the purpose of determining the rate shall be its full value under the said section 402.
3. This part does not apply to animals provided for in item 100.04 of part 1 of schedule 1.

Subpart A.—Articles Not Advanced or Improved Abroad

Subpart A headnotes:

1. The items in this subpart (except items 804.10 and 804.20) shall not apply to any article—
   (a) exported with benefit of drawback;
   (b) of a kind with respect to the importation of which an internal-revenue tax is imposed at the time such article is entered, unless such article was subject to an internal-revenue tax imposed upon production or importation at the time of its exportation from the United States and it shall be proved that such tax was paid before exportation and was not refunded; or
   (c) manufactured or produced in the United States in a customs bonded warehouse or under item 864.05—and exported under any provision of law.

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987)—Continued

Part 1.—Articles Exported and Returned

Item	Stat. suffix	Articles	Units of quantity	Rates of duty		
				1	Special	2
		* * * * * * *				
800.00		Products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad		Free		Free

2. American goods repaired or altered abroad (TSUS item 806.20)

American metal articles processed abroad (TSUS item 806.30)

American components assembled abroad (TSUS item 807.00)

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987)

SCHEDULE 8.—SPECIAL CLASSIFICATION PROVISIONS

Part 1.—Articles Exported and Returned

Item	Stat. suffix	Articles	Units of quantity	Rates of duty		
				1	Special	2

Subpart B.—Articles Advanced or Improved Abroad

Subpart B headnotes:

1. This subpart shall not apply to any article exported—

(a) from continuous customs custody with remission, abatement, or refund of duty;

(b) with benefit of drawback;

(c) to comply with any law of the United States or regulation of any Federal agency requiring exportations; or

(d) after manufacture or production in the United States under item 864.05 of this schedule.

2. *Articles repaired, altered, processed, or otherwise changed in condition abroad.*—The following provisions apply only to items 806.20 and 806.30:

(a) The value of repairs, alterations, processing, or other change in condition outside the United States shall be—

(i) the cost to the importer of such change; or

(ii) if no charge is made, the value of such change, as set out in the invoice and entry papers; except that, if the appraiser concludes that the amount so set out does not represent a reasonable cost or value, then the value of the change shall be determined in accordance with section 402 of this Act.

(b) No appraisement of the imported article in its changed condition shall be required unless necessary to a determination of the rate or rates of duty applicable to such article.

Item	Stat. suffix	Articles	Units of quantity	Rates of duty		
				1	Special	2

(c) The duty upon the value of the change in condition shall be at the rate which would apply to the article itself, as an entirety without constructive separation of its components, in its condition as imported if it were not within the purview of this subpart. If the article, as returned to the United States, is subject to a specific or compound rate of duty, such rate shall be converted to the ad valorem rate which when applied to the full value of such article determined in accordance with section 402 of this Act would provide the same amount of duties as the specific or compound rate. In order to compute the duties due, the ad valorem rate so obtained shall be applied to the value of the change in condition made outside the United States.

3. *Articles assembled abroad with components produced in the United States.*—The following provisions apply only to item 807.00:

(a) The value of the products of the United States assembled into the imported article shall be—

(i) the cost of such products at the time of the last purchase; or

(ii) if no charge is made, the value of such products at the time of the shipment for exportation, as set out in the invoice and entry papers; except that, if the appraiser concludes that the amount so set out does not represent a reasonable cost or value, then the value of such products shall be determined in accordance with section 402 or 402a of this Act.

(b) The duty on the imported article shall be at the rate which would apply to the imported article itself, as an entirety without constructive separation of its components, in its condition as imported if it were not within the purview of this subpart. If the imported article is subject to a specific or compound rate of duty, the total duties shall be reduced in such proportion as the cost or value of such products of the United States bears to the full value of the imported article.

4. No imported article shall be accorded partial exemption from duty under more than one item in this subpart.

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Item	Stat. suffix	Articles	Units of quantity	Rates of duty 1	Special	2
		Articles returned to the United States after having been exported to be advanced in value or improved in condition by any process of manufacture or other means:				
806.20		Articles exported for repairs or alteration		A duty upon the value of the repairs or alterations (see headnote 2 of this subpart)	Free (E,I) [1]	A duty upon the value of the repairs or alterations (see headnote 2 of this subpart)
806.30		Any article of metal (except precious metal) manufactured in the United States or subjected to a process of manufacture in the United States, if exported for further processing, and if the exported article as processed outside the United States, or the article which results from the processing outside the United States, is returned to the United States for further processing		A duty upon the value of such processing outside the United States (see headnote 2 of this subpart)	Free (E,I) [1]	A duty upon the value of such processing outside the United States (see headnote 2 of this subpart)

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987)—Continued

Part 1.—Articles Exported and Returned

Item	Stat. suffix	Articles	Units of quantity	Rates of duty 1	Special	2
807.00		Articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting		A duty upon the full value of the imported article, less the cost or value of such products of the United States (see headnote 3 of this subpart)	Free (E,I) [1]	A duty upon the full value of the imported article, less the cost or value of such products of the United States (see headnote 3 of this subpart)

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[1] Duty-free treatment is provided to products imported under the Caribbean Basin Economic Recovery Act (E) and under the United States-Israel Free Trade Implementation Act of 1985 (I).

3. Personal (tourist) exemptions (TSUS items 813.30, 813.31)

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987)

SCHEDULE 8.—SPECIAL CLASSIFICATION PROVISIONS

Part 2.—Personal Exemptions

Item	Stat. suffix	Articles	Units of quantity	Rates of duty 1	Special	2
		Articles imported by or for the account of any person arriving in the United States who is a returning resident thereof (including American citizens who are residents of American Samoa, Guam, or the Virgin Islands of the United States):				
		* * * * * * *				
		Other articles, acquired abroad as an incident of the journey from which the person is returning if such person arrives from the Virgin Islands of the United States or from a contiguous country which maintains a free zone or free port, or arrives from any other country after having remained beyond the United States for a period of not less than 48 hours, for his personal or household use, but not imported for the account of any other person nor intended for sale, if declared in accordance with regulations of the Secretary of the Treasury and if such person has not claimed an exemption under item 813.30 or 813.31 within 30 days preceding his arrival, and does not claim an exemption under the other item on his arrival:				
813.30		Articles, accompanying a person, not over $400 in aggregate fair retail value in the country of acquisition, including (but only in the case of an individual who has attained the age of 21) not more than 1 liter of alcoholic beverages and including not more than 200 cigarettes and 100 cigars		Free		Free

Item	Stat. suffix	Articles	Units of quantity	Rates of duty		
				1	Special	2
813.31		Articles whether or not accompanying a person, not over $800 in aggregate fair market value in the country of acquisition, including— (a) but only in the case of an individual who has attained the age of 21, not more than 5 liters of alcoholic beverages, not more than 1 liter of which shall have been acquired elsewhere than in American Samoa, Guam, or the Virgin Islands of the United States and not more than 4 liters of which shall have been produced elsewhere than in such insular possessions, and (b) not more than 1,000 cigarettes, not more than 200 of which shall have been acquired elsewhere than in such insular possessions, and not more than 100 cigars, if such person arrives directly or indirectly from such insular possessions, not more than $400 of which shall have been acquired elsewhere than in such insular possessions (but this item does not permit the entry of articles not accompanying a person which were acquired elsewhere than in such insular possessions)		Free		Free

4. Products from U.S. insular possessions (general headnote 3(a))

Item	Stat. suffix	Articles	Units of quantity	Rates of duty		
				1	Special	2

3. (a) *Products of Insular Possessions.*

(i) Except as provided in headnote 6 of subpart E of part 2 of schedule 7, and except as provided in headnote 3 of subpart A of part 7 of schedule 7, and except as provided in section 423 of the Tax Reform Act of 1986, articles imported from insular possessions of the United States which are outside the customs territory of the United States are subject to the rates of duty set forth in column numbered 1 of the schedules, except that all such articles the growth or product of any such possession, or manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession or of the customs territory of the United States, or of both, which do not contain foreign materials to the value of more than 70 percent of their total value (or more than 50 percent of their total value with respect to articles described in section 213(b) of the Caribbean Basin Economic Recovery Act), coming to the customs territory of the United States directly from any such possession, and all articles previously imported into the customs territory of the United States with payment of all applicable duties and taxes imposed upon or by reason of importation which were shipped from the United States, without remission, refund, or drawback of such duties or taxes, directly to the possession from which they are being returned by direct shipment, are exempt from duty.

(ii) In determining whether an article produced or manufactured in any such insular possession contains foreign materials to the value of more than 70 percent, no material shall be considered foreign which either—

(A) at the time such article is entered, or

(B) at the time such material is imported into the insular possession,

Item	Stat. suffix	Articles	Units of quantity	Rates of duty 1	Rates of duty Special	Rates of duty 2

may be imported into the customs territory from a foreign country, other than Cuba or the Philippine Republic, and entered free of duty; except that no article containing material to which (B) of this subdivision applies shall be exempt from duty under subdivision (i) unless adequate documentation is supplied to show that the material has been incorporated into such article during the 18-month period after the date on which such material is imported into the insular possession.

(iii) Subject to the limitations imposed under section 503(b) and 504(c) of the Trade Act of 1974, articles designated eligible articles under section 503 of such Act which are imported from an insular possession of the United States shall receive duty treatment no less favorable than the treatment afforded such articles imported from a beneficiary developing country under title V of such Act.

(iv) Subject to the provisions in section 213 of the Caribbean Basin Economic Recovery Act, articles which are imported from insular possessions of the United States shall receive duty treatment no less favorable than the treatment afforded such articles when they are imported from a beneficiary country under such Act.

5. Canadian motor vehicles and original equipment therefor (general headnote 3(c); headnote 2, part 6B, schedule 6)

Item	Stat. suffix	Articles	Units of quantity	Rates of duty 1	Rates of duty Special	Rates of duty 2

General Headnotes:

3. (c) *Products of Canada*

(i) Products of Canada imported into the customs territory of the United States, whether imported directly or indirectly, are subject to the rates of duty set forth in column numbered 1 of the schedules. The rates of duty for a Canadian article, as defined in subdivision (c)(ii) of this headnote, apply only as shown in the said column numbered 1.

(ii) The term "Canadian article", as used in the schedules, means an article which is the product of Canada, but does not include any article produced with the use of materials imported into Canada which are products of any foreign country (except materials produced within the customs territory of the United States), if the aggregate value of such imported materials when landed at the Canadian port of entry (that is, the actual purchase price, or, if not purchased, the export value, of such materials, plus, if not included therein, the cost of transporting such materials to Canada but exclusive of any landing cost and Canadian duty) was—

(A) with regard to any motor vehicle or automobile truck tractor entered on or before December 31, 1967, more than 60 percent of the appraised value of the article imported into the customs territory of the United States; and

(B) with regard to any other article (including any motor vehicle or automobile truck tractor entered after December 31, 1967), more than 50 percent of the appraised value of the article imported into the customs territory of the United States.

Item	Stat. suffix	Articles	Units of quantity	Rates of duty		
				1	Special	2

Schedule 6, Part 6b

2. *Motor Vehicles and Original Equipment Therefor of Canadian Origin.*

(a) The term *"original motor-vehicle equipment"*, as used in the schedules with reference to a *Canadian* article (as defined by general headnote 3(c)), means such a Canadian article which has been obtained from a supplier in Canada under or pursuant to a written order, contract, or letter of intent of a bona fide motor-vehicle manufacturer in the United States, and which is a fabricated component intended for use as original equipment in the manufacture in the United States of a motor vehicle, but the term does not include trailers or articles to be used in their manufacture.

(b) The term *"motor vehicle"*, as used in this headnote, means a motor vehicle of a kind described in item 692.02, 692.04, or 692.10 of this subpart (excluding an electric trolley bus and a three-wheeled vehicle) or an automobile truck tractor.

(c) The term *"bona fide motor-vehicle manufacturer"*, as used in this headnote, means a person who, upon application to the Secretary of Commerce, is determined by the Secretary to have produced no fewer than 15 complete motor vehicles in the United States during the previous 12 months, and to have installed capacity in the United States to produce 10 or more complete motor vehicles per 40-hour week. The Secretary of Commerce shall maintain, and publish from time to time in the Federal Register, a list of the names and addresses of bona fide motor-vehicle manufacturers.

(d) If any Canadian article accorded the status of original motor-vehicle equipment is not so used in the manufacture in the United States of motor vehicles, such Canadian article or its value (to be recovered from the importer or other person who diverted the article from its intended use as original motor-vehicle equipment) shall be subject to forfeiture, unless at the time of the diversion of the Canadian article the United States Customs Service is notified in writing, and, pursuant to arrangements made with the Service—

- (i) the Canadian article is, under customs supervision, destroyed or exported, or.
- (ii) duty is paid to the United States Government in an amount equal to the duty which would have been payable at the time of entry if the Canadian article had not been entered as original motor-vehicle equipment.

6. Civil aircraft products (headnote 3, part 6C, schedule 6)

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987)

SCHEDULE 6.—METALS AND METAL PRODUCTS

Part 6.—Transportation Equipment

Item	Stat. suffix	Articles	Units of quantity	Rates of duty		
				1	Special	2
		3. *Certified for Use in Civil Aircraft:* (a) Whenever the term *certified for use in civil aircraft*" is used in an item description in the schedules, the importer shall file a written statement, accompanied by such supporting documentation as the Secretary of the Treasury may require, with the appropriate customs officer stating that the imported article has been imported for use in civil aircraft, that it will be so used, and that the article has been approved for such use by the Administrator of the Federal Aviation Administration (F.A.A.) or by the airworthiness authority in the country of exportation, if such approval is recognized by the F.A.A. as an acceptable substitute for F.A.A. certification, or that an application for approval for such use has been submitted to, and accepted by, the Administrator of the F.A.A. (b) For purposes of the schedules the term *"civil aircraft"* means all aircraft other than aircraft purchased for use by the Department of Defense or the United States Coast Guard.				

B. GENERALIZED SYSTEM OF PREFERENCES

Title V of Trade Act of 1974, as amended

[19 U.S.C. 2416; P.L. 93-618, as amended by P.L. 94-455, P.L. 96-39, P.L. 98-573, P.L. 99-47, P.L. 99-514, and P.L. 99-570]

SEC. 501. AUTHORITY TO EXTEND PREFERENCES.

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title. In taking any such action, the President shall have due regard for—

(1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;

(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

(3) the anticipated impact of such action on United States producers of like or directly competitive products; and

(4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

SEC. 502. BENEFICIARY DEVELOPING COUNTRY.

(a)(1) For purposes of this title, the term "beneficiary developing country" means any country with respect to which there is in effect an Executive order or Presidential proclamation by the President of the United States designating such country as a beneficiary developing country for purposes of this title. Before the President designates any country as a beneficiary developing country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(2) If the President has designated any country as a beneficiary developing country for purposes of this title, he shall not terminate such designation (either by issuing an Executive order or Presidential proclamation for that purpose or by issuing an Executive order or Presidential proclamation which has the effect of terminating such designation) unless, at least 60 days before such termination, he has notified the House of Representatives and the Senate and has notified such country of his intention to terminate such designation, together with the considerations entering into such decision.

(3) For purposes of this title, the term "country" means any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional

economic integration among its members through appropriate means, including, but not limited to, the reduction of duties, the President may by Executive order or Presidential proclamation provide that all members of such association other than members which are barred from designation under subsection (b) shall be treated as one country for purposes of this title.

(4) For purposes of this title, the term "internationally recognized worker rights" includes—

(A) the right of association;

(B) the right to organize and bargain collectively;

(C) a prohibition on the use of any form of forced or compulsory labor;

(D) a minimum age for the employment of children; and

(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(b) No designation shall be made under this section with respect to any of the following:

Australia
Austria
Canada
Czechoslovakia
European Economic Community
  members states
Finland
Germany (East)
Iceland
Japan
Monaco
New Zealand
Norway
Poland
Republic of South Africa
Sweden
Switzerland
Union of Soviet Socialist Republics

In addition, the President shall not designate any country a beneficiary developing country under this section—

(1) if such country is a Communist country, unless (A) the products of such country receive nondiscriminatory treatment, (B) such country is a contracting party to the General Agreement on Tariffs and Trade and a member of the International Monetary Fund, and (C) such country is not dominated or controlled by international communism;

(2) if such country is a member of the Organization of Petroleum Exporting Countries, or a party to any other arrangement of foreign countries, and such country participates in any action pursuant to such arrangement the effect of which is to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level and to cause serious disruption of the world economy;

(3) if such country affords preferrential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated before January 1, 1976, or that action will be taken before January 1, 1976, to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(4) if such country—

(A) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights), so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property,

unless—

(D) the President determines that—

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and

promptly furnishes a copy of such determination to the Senate and House of Representatives;

(5) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(6) if such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism; and

(7) if such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

Paragraphs (4), (6), (7), and (8) shall not prevent the designation of any country as a beneficiary developing country under this section if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) In determining whether to designate any country a beneficiary developing country under this section, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) whether or not the other major developed countries are extending generalized preferential tariff treatment to such country;

(4) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(5) the extent to which such country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights;

(6) the extent to which such country has taken action to—

(A) reduce trade distorting investment practices and policies (including export performance requirements); and

(B) reduce or eliminate barriers to trade in services; and

(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

[(d) Amendment of general headnote 3(a) to the Tariff Schedules of the United States relating to products of insular possessions.]

(e)(1) The President may exempt from the application of paragraph (2) of subsection (b) any country during the period during which such country (A) is a party to a bilateral or multilateral trade agreement to which the United States is also a party if such agreement fulfills the negotiating objectives set forth in section 108 of assuring the United States fair and equitable access at reasonable prices to supplies of articles of commerce important to the economic requirements of the United States and (B) is not in violation of such agreement by action denying the United States such fair and equitable access.

(2) The President may exempt from the application of paragraph (2) of subsection (b) any country that enters into a bilateral product-specific trade agreement with the United States under section 101 or 102 of the Trade Act of 1974 before January 3, 1980. The President shall terminate the exemption granted to any country under the preceding sentence if that country interrupts or terminates the delivery of supplies of petroleum and petroleum products to the United States.

SEC. 503. ELIGIBLE ARTICLES.

(a) The President shall, from time to time, publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles for purposes of this title. Before any such list is furnished to the Commission, there shall be in effect an Executive order or Presidential proclamation under section 502 designating beneficiary developing countries. The provisions of sections 131, 132, 133, and 134 of this Act shall be complied with as though action under section 501 were action under section 101 of this Act to carry out a trade agreement entered into under section 101. After receiving the advice of the Commission with respect to the listed articles, the President shall designate those articles he considers appropriate to be eligible articles for purposes of this title by Executive order or Presidential proclamation.

(b) the duty-free treatment provided under section 501 with respect to any eligible article shall apply only—

(1) to an article which is imported directly from a beneficiary developing country into the customs territory of the United States; and

(2) If the sum of (A) the cost or value of the materials produced in the beneficiary developing country or any 2 or more countries which are members of the same association of countries which is treated as one country under section 502(a)(3), plus (B) the direct costs of processing operations performed in such beneficiary developing country or such member countries is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States.

The Secretary of the Treasury, after consulting with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out this subsection.

(c)(1) The President may not designate any article as an eligible article under subsection (a) if such article is within one of the following categories of import-sensitive articles—

(A) textile and apparel articles which are subject to textile agreements,

(B) watches,

(C) import-sensitive electronic articles,

(D) import-sensitive steel articles,

(E) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this title on April 1, 1984,

(F) import-sensitive semimanufactured and manufactured glass products, and

(G) any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

(2) No article shall be an eligible article for purposes of this title for any period during which such article is the subject of any action proclaimed pursuant to section 203 of this Act or section 232 or 351 of the Trade Expansion Act of 1962.

SEC. 504. LIMITATIONS ON PREFERENTIAL TREATMENT.

(a)(1) The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under section 501 with respect to any article or with respect to any country; except that no rate of duty may be established in respect of any article pursuant to this section other than the rate which would apply but for this title. In taking any action under this subsection, the President shall consider the factors set forth in sections 501 and 502(c).

(2) The President shall, as necessary, advise the Congress and, by no later than January 4, 1988, submit to the Congress a report on the application of sections 501 and 502(c), and the actions the President has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in section 502(c).

(b) The President shall, after complying with the requirements of section 502(a)(2), withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, he determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under section 502(b). Such country shall cease to be a beneficiary developing country on the day on which the President issues an Executive order or Presidential proclamation revoking his designation of such country under section 502.

(c)(1) Subject to paragraphs (2) through (7) and subsection (d), whenever the President determines that any country—

(A) has exported (directly or indirectly) to the United States during a calendar year a quantity of an eligible article having an appraised value in excess of an amount which bears the same ratio to $25,000,000 as the gross national product of the United States for the preceding calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1974; or

(B) has exported (either directly or indirectly) to the United States a quantity of any eligible article equal to or exceeding 50 percent of the appraised value of the total imports of such article into the United States during any calendar year;

then, not later than July 1 of the next calendar year, such country shall not be treated as a beneficiary developing country with respect to such article.

(2)(A) Not later than January 4, 1987, and periodically thereafter, the President shall conduct a general review of eligible articles based on the considerations described in section 501 or 502(c).

(B) If, after any review under subparagraph (A), the President determines that this subparagraph should apply because a beneficiary developing country has demonstrated a sufficient degree of competitiveness (relative to other beneficiary developing countries) with respect to any eligible article, then paragraph (1) shall be applied to such country with respect to such article by substituting—

(i) "1984" for "1974" in subparagraph (A), and

(ii) "25 percent" for "50 percent" in subparagraph (B).

(3)(A) Not earlier than January 4, 1987, the President may waive the application of this subsection with respect to any eligible article of any beneficiary developing country if, before July 1 of the calendar year beginning after the calendar year for which a determination described in paragraph (1) was made with respect to such eligible article, the President—

(i) receives the advice of the International Trade Commission on whether any industry in the United States is likely to be adversely affected by such waiver,

(ii) determines, based on the considerations described in sections 501 and 502(c) and the advice described in clause (i), that such waiver is in the national economic interest of the United States, and

(iii) publishes the determination described in clause (ii) in the Federal Register.

(B) In making any determination under subparagraph (A), the President shall give great weight to—

(i) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

(ii) the extent to which such country provides adequate and effective means under its law for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights.

(C) Any waiver granted pursuant to this paragraph shall remain in effect until the President determines that such waiver is no longer warrented due to changed circumstances.

(D)(i) The President may not exercise the waiver authority provided under subparagraph (A) with respect to a quantity of eligible articles entered in any calendar year which exceeds an aggregate value equal to 30 percent of the total value of all articles which entered duty-free under this title during the preceding calendar year.

(ii) The President may not exercise the waiver authority provided under subparagraph (A) with respect to a quantity of eligible articles entered during any calendar year beginning after 1986 the aggregate value of which exceeds 15 percent of the total value of all articles that have entered duty-free under this title during the preceding calendar year from those beneficiary developing countries which for the preceding calendar year—

(I) had a per capita gross national product (calculated on the basis of the best available information, including that of the World Bank) of $5,000 or more; or

(II) had exported (either directly or indirectly) to the United States a quantity of articles that was duty-free under this title that had an appraised value of more than 10 percent of the total imports of all articles that entered duty-free under this title during that year.

(iii) There shall be counted against the limitations imposed under clauses (i) and (ii) for any calendar year only that quantity of any eligible article of any country that—

(I) entered duty-free under this title during such calendar year; and

(II) is in exess of the quantity of that article that would have been so entered during such calendar year if the 1974 limitation applied under paragraph (1)(A) and the 50 percent limitation applied under paragraph (1)(B).

(4) Except in any case to which paragraph (2)(B) applies, the President may waive the application of this subsection if, before July 1 of the calendar year beginning after the calendar year for which a determination described in paragraph (1) was made, the President determines and publishes in the Federal Register that, with respect to such country—

(A) there has been an historical preferential trade relationship between the United States and such country,

(B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

(C) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce.

(5) A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of this subsection may be redesignated a beneficiary developing country with respect to such article, subject to the provisions of sections 501 and 502, if imports of such article from such country did not exceed the limitations in paragraph (1) (after application of paragraph (2)) during the preceding calendar year.

(6)(A) This subsection shall not apply to any beneficiary developing country which the President determines, based on the considerations described in sections 501 and 502(c), to be a least-developed beneficiary developing country.

(B) The President shall—

(i) make a determination under subparagraph (A) with respect to each beneficiary developing country before July 4, 1985, and periodically thereafter, and

(ii) notify the Congress at least 60 days before any such determination becomes final.

(7) For purposes of this subsection, the term "country" does not include an association of countries which is treated as one country under section 502(a)(3), but does include a country which is a member of any such association.

(d)(1) Subsection (c)(1)(B) (after application of subsection (c)(2)) shall not apply with respect to any eligible article if a like or directly competitive article is not produced in the United States on January 3, 1985.

(2) The President may disregard subsection (c)(1)(B) with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year is not in excess of an amount which bears the same ratio to $5,000,000 as the gross national product of the United States for that calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1979.

(e) No action pursuant to section 501 may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 (19 U.S.C. sec. 1319) on coffee imported into Puerto Rico.

(f)(1) If the President determines that the per capita gross national product (calculated on the basis of the best available information, including that of the World Bank) of any beneficiary developing country for any calendar year (hereafter in this subsection referred to as the "determination year") after 1984, exceeds the applicable limit for the determination year—

(A) subsection (c)(1)(B) shall be applied for the 2-year period beginning on July 1 of the calendar year succeeding the determination year by substituting "25 percent" for "50 percent", and

(B) such country shall not be treated as a beneficiary developing country under this title after the close of such 2-year period.

(2)(A) For purposes of this subsection, the term "applicable limit" means a sum of—

(i) $8,500, plus

(ii) 50 percent of the amount determined under subparagraph (B) for the determination year.

(B) The amount determined under this subparagraph for the determination year is an amount equal to—

(i) $8,500, multiplied by

(ii) the percentage determined by dividing—

(I) the excess, if any, of the gross national product of the United States (as determined by the Secretary of Commerce) for the determination year over the gross national product of the United States for 1984, by

(II) the gross national product for 1984.

SEC. 505. TERMINATION OF DUTY-FREE TREATMENT AND REPORTS.

(a) No duty-free treatment provided under this title shall remain in effect after July 4, 1993.

(b) On or before January 4, 1990, the President shall submit to the Congress a full and complete report regarding the operation of this title.

(c) The President shall submit an annual report to the Congress on the status of internationally recognized worker rights within each beneficiary developing country.

SEC. 506. AGRICULTURAL EXPORTS OF BENEFICIARY DEVELOPING COUNTRIES.

The appropriate agencies of the United States shall assist beneficiary developing countries to develop and implement measures designed to assure that the agricultural sectors of their economies are not directed to export markets to the detriment of the production of foodstuffs for their citizenry.

C. CARIBBEAN BASIN INITIATIVE (CBI)

Caribbean Basin Economic Recovery Act

[19 U.S.C. 2701; P.L. 98-67; title II as amended by P.L. 98-573, P.L. 99-514, and P.L. 99-570]

SEC. 201. SHORT TITLE.

This title may be cited as the "Caribbean Basin Economic Recovery Act".

Subtitle A—Duty-Free Treatment

SEC. 211. AUTHORITY TO GRANT DUTY-FREE TREATMENT.

The President may proclaim duty-free treatment for all eligible articles from any beneficiary country in accordance with the provisions of this title.

SEC. 212. BENEFICIARY COUNTRY.

(a)(1) For purposes of this title—

(A) The term "beneficiary country" means any country listed in subsection (b) with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of this title. Before the President designates any country as a beneficiary country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(B) The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(C) The term "TSUS" means Tariff Schedules of the United States (19 U.S.C. 1202).

(2) If the President has designated any country as a beneficiary country for purposes of this title, he shall not terminate such designation (either by issuing a proclamation for that purpose or by issuing a proclamation which has the effect of terminating such designation) unless, at least sixty days before such termination, he has notified the House of Representatives and the Senate and has notified such country of his intention to terminate such designation, together with the considerations entering into such decision.

(b) In designating countries as "beneficiary countries" under this title the President shall consider only the following countries and territories or successor political entities:

Anguilla
Antigua and Barbuda
Bahamas, The
Barbados
Belize
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras

Jamaica
Nicaragua
Panama
Saint Lucia
Saint Vincent and the Grenadines
Suriname
Trinidad and Tobago
Cayman Islands
Montserrat
Netherlands Antilles
Saint Christopher-Nevis
Turks and Caicos Islands
Virgin Islands, British

In addition, the President shall not designate any country a beneficiary country under this title—

(1) if such country is a Communist country;

(2) if such country—

(A) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify—

(i) any existing contract or agreement with, or

(ii) any patent, trademark, or other intellectual property of,

a United States citizen or a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) a dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and

promptly furnishes a copy of such determination to the Senate and House of Representatives;

(3) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership or association which is 50 per centum or more beneficially owned by United States citizens, which have been made by arbitrators appointed

for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(4) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent; and

(6) unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens.

Paragraphs (1), (2), (3), and (5) shall not prevent the designation of any country as a beneficiary country under this Act if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) In determining whether to designate any country a beneficiary country under this title, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

(4) the degree to which such country follows the accepted rules of international trade provided for under the General Agreement on Tariffs and Trade, as well as applicable trade agreements approved under section 2(a) of the Trade Agreements Act of 1979;

(5) the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

(6) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

(7) the degree to which such country is undertaking self-help measures to promote its own economic development;

(8) the degree to which workers in such country are afforded reasonable workplace conditions and enjoy the right to organize and bargain collectively;

(9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

(10) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent; and

(11) the extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this title.

[(d) Amendment of general headnote 3(a) to the TSUS relating to products of insular possessions.]

(e) The President shall, after complying with the requirements of subsection (a)(2), withdraw or suspend the designation of any country as a beneficiary country if, after such designation, he determines that as the result of changed circumstances such country would be barred from designation as a beneficiary country under subsection (b).

SEC. 213. ELIGIBLE ARTICLES.

(a)(1) Unless otherwise excluded from eligibility by this title, and subject to section 423 of the Tax Reform Act of 1986, the duty-free treatment provided under this title shall apply to any article which is the growth, product, or manufacture of a beneficiary country if—

(A) that article is imported directly from a beneficiary country into the customs territory of the United States; and

(B) the sum of (i) the cost or value of the materials produced in a beneficiary country or two or more beneficiary countries, plus (ii) the direct costs of processing operations performed in a beneficiary country or countries is not less than 35 per centum of the appraised value of such article at the time it is entered.

For purposes of determining the percentage referred to in subparagraph (B), the term "beneficiary country" includes the Commonwealth of Puerto Rico and the United States Virgin Islands. If the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico) is included with respect to an article to which this paragraph applies, an amount not to exceed 15 per centum of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (B).

(2) The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out this subsection including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this title, an article must be wholly the growth, product, or manufacture of a beneficiary country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary country; but no article or material of a beneficiary country shall be eligible for such treatment by virtue of having merely undergone—

(A) simple combining or packaging operations, or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(3) As used in this subsection, the phrase "direct costs of processing operations" includes, but is not limited to—

(A) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

(B) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned or are not costs of manufacturing the product, such as (i) profit, and (ii) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salemen's salaries, commissions or expenses.

(4) Notwithstanding section 311 of the Tariff Act of 1930, the products of a beneficiary country which are imported directly from any beneficiary country into Puerto Rico may be entered under bond for processing or use in manufacturing in Puerto Rico. No duty shall be imposed on the withdrawal from warehouse of the product of such processing or manufacturing if, at the time of such withdrawal, such product meets the requirements of paragraph (1)(B).

(b) The duty-free treatment provided under this title shall not apply to—

(1) textile and apparel articles which are subject to textile agreements;

(2) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated at the time of the effective date of this title as eligible articles for the purpose of the generalized system of preferences under title V of the Trade Act of 1974;

(3) tuna, prepared or preserved in any manner, in airtight containers;

(4) petroleum, or any product derived from petroleum, provided for in part 10 of schedule 4 of the TSUS; or

(5) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which TSUS column 2 rates of duty apply.

(c)(1) As used in this subsection—

(A) The term "sugar and beef products" means—

(i) sugars, sirups, and molasses provided for in items 155.20 and 155.30 of the TSUS, and

(ii) articles of beef or veal, however provided for in subpart B of part 2 of schedule 1 of the TSUS.

(B) The term "Plan" means a stable food production plan that consists of measures and proposals designed to ensure that the present level of food production in, and the nutritional level of the population of, a beneficiary country will not be adversely affected by changes in land use and land owership that will result if increased production of sugar and beef products is undertaken in response to the duty-free treatment extended under this title to such products. A Plan must specify such facts regarding, and such proposed actions by, a beneficiary country as the President deems necessary for purposes of carrying out this subsection, including but not limited to—

(i) the current levels of food production and nutritional health of the population;

(ii) current level of production and export of sugar and beef products;

(iii) expected increases in production and export of sugar and beef products as a result of the duty-free access to the United States market provided under this title;

(iv) measures to be taken to ensure that the expanded production of those products because of such duty-free access will not occur at the expense of stable food production; and

(v) proposals for a system to monitor the impact of such duty-free access on stable food production and land use and land ownership patterns.

(2) Duty-free treatment extended under this title to sugar and beef products that are the product of a beneficiary country shall be suspended by the President under this subsection if—

(A) the beneficiary country, within the ninety-day period beginning on the date of its designation as such a country under section 212, does not submit a Plan to the President for evaluation;

(B) on the basis of his evaluation, the President determines that the Plan of a beneficiary country does not meet the criteria set forth in paragraph (1)(B); or

(C) as a result of the monitoring of the operation of the Plan under paragraph (5), the President determines that a beneficiary country is not making a good faith effort to implement its Plan, or that the measures and proposals in the Plan, although being implemented, are not achieving their purposes.

(3) Before the President suspends duty-free treatment by reason of paragraph (2) (A), (B), or (C) to the sugar and beef products of a beneficiary country, he must offer to enter into consultation with the beneficiary country for purposes of formulating appropriate remedial action which may be taken by that country to avoid such suspension. If the beneficiary country thereafter enters into consultation within a reasonable time and undertakes to formulate remedial action in good faith, the President shall withhold the suspension of duty-free treatment on the condition that the remedial action agreed upon be appropriately implemented by that country.

(4) The President shall monitor on a biennial basis the operation of the Plans implemented by beneficiary countries, and shall submit a written report to Congress by March 15 following the close of each biennium, that—

(A) specifies the extent to which each Plan, and remedial actions, if any, agreed upon under paragraph (4), have been implemented; and

(B) evaluates the results of such implementation.

(5) The President shall terminate any suspension of duty-free treatment imposed under this subsection if he determines that the beneficiary country has taken appropriate action to remedy the factors on which the suspension was based.

(d) For such period as there is in effect a proclamation issued by the President pursuant to the authority vested in him by section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) to protect a price-support program for sugar beets and sugar cane, the importation and duty-free treatment of sugars, sirups, and molasses classified under items 155.20 and 155.30 of the TSUS shall be governed in the following manner:

(1)(A) For all beneficiary countries, except those subject to subparagraph (B) and paragraph (2), duty-free treatment shall be provided in the same manner as it is provided pursuant to title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.), at the time of the effective date of this title; except that the President upon the recommendation of the Secretary of Agriculture, may suspend or adjust upward the value limitation provided for in section 504(c)(1) of the Trade Act of 1974 on the duty-free treatment afforded to beneficiary countries under this section if he finds that such adjustment will not interfere with the price support program for sugar beets and sugar cane and is appropriate in light of market conditions.

(B) As an alternative to subparagraph (A), the President may at the request of a beneficiary country not subject to paragraph (2) and upon the recommendation of the Secretary of Agriculture, elect to permit sugar, sirups, and molasses from that country to enter duty-free during a calendar year subject to quantitative limitations to be established by the President on the quantity of sugar, sirups, and molasses entered from that country.

(2) For the following countries whose exports of sugar, sirups, and molasses in 1981 were not eligible for duty-free treatment because of the operation of section 504(c) of the Trade Act of 1974, the quantity of sugar, sirups, and molasses which may be entered in any calendar year shall be limited to no more than the quantity specified below:

Metric tons:	
Dominican Republic	780,000
Guatemala	210,000
Panama	160,000

Such sugar, sirups, and molasses shall be admitted free of duty, except as provided for in paragraph (3).

(3) The President, upon the recommendation of the Secretary of Agriculture, may suspend or adjust upward the quantitative limitations imposed under paragraph (1)(B) or (2) if he determines such action will not interfere with the price support program for sugar beets and sugar cane and is appropriate in light of market conditions. The President, upon the recommendation of the Secretary of Agriculture, may suspend the duty-free treatment for all or part of the quantity of sugar, sirups, and molasses permitted to be entered by paragraphs (1)(B) and (2) if such action is necessary to protect the price-support program for sugar beets and sugar cane.

(4) Any quantitative limitation imposed on a beneficiary country under paragraphs (1)(B) and (2) shall apply only to the extent that such limitation permits a lesser quantity of sugar, sirups, and molasses to be entered from that country than the

quantity that would be permitted to be entered under any other provision of law.

(e)(1) The President may by proclamation suspend the duty-free treatment provided by this title with respect to any eligible article and may proclaim a duty rate for such article if such action is proclaimed pursuant to section 203 of the Trade Act of 1974 or section 232 of the Trade Expansion Act of 1962.

(2) In any report by the International Trade Commission to the President under section 201(d)(1) of the Trade Act of 1974 regarding any article for which duty-free treatment has been proclaimed by the President pursuant to this title, the Commission shall state whether and to what extent its findings and recommendations apply to such article when imported from beneficiary countries.

(3) For purposes of subsections (a) and (c) of section 203 of the Trade Act of 1974, the suspension of the duty-free treatment provided by this title shall be treated as an increase in duty.

(4) No proclamation which provides solely for a suspension referred to in paragraph (3) of this subsection with respect to any article shall be made under subsections (a) and (c) of section 203 of the Trade Act of 1974 unless the United States International Trade Commission, in addition to making an affirmative determination with respect to such article under section 201(b) of the Trade Act of 1974, determines in the course of its investigation under section 201(b) of such Act that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the duty-free treatment provided by this title.

(5)(A) Any proclamation issued pursuant to section 203 of the Trade Act of 1974 that is in effect when duty-free treatment pursuant to section 101 of this title is proclaimed shall remain in effect until modified or terminated.

(B) If any article is subject to import relief at the time duty-free treatment is proclaimed pursuant to section 211, the President may reduce or terminate the application of such import relief to the importation of such article from beneficiary countries prior to the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of subsections (h) and (i) of section 203 of the Trade Act of 1974.

(f)(1) If a petition is filed with the International Trade Commission pursuant to the provisions of section 201 of the Trade Act of 1974 regarding a perishable product and alleging injury from imports from beneficiary countries, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted pursuant to paragraph (3) of this subsection with respect to such article.

(2) Within fourteen days after the filing of a petition under paragraph (1) of this subsection—

(A) if the Secretary of Agriculture has reason to believe that a perishable product from a beneficiary country is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the President and recommend that the President take emergency action; or

(B) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

(3) Within seven days after the President receives a recommendation from the Secretary of Agriculture to take emergency action pursuant to paragraph (2) of this subsection, he shall issue a proclamation withdrawing the duty-free treatment provided by this title or publish a notice of his determination not to take emergency action.

(4) The emergency action provided by paragraph (3) of this subsection shall cease to apply—

(A) upon the proclamation of import relief pursuant to section 202(a)(1) of the Trade Act of 1974,

(B) on the day the President makes a determination pursuant to section 203(b)(2) of such Act not to impose import relief,

(C) in the event of a report of the United States International Trade Commission containing a negative finding, on the day the Commission's report is submitted to the President, or

(D) whenever the President determines that because of changed circumstances such relief is no longer warranted.

(5) For purposes of this subsection, the term "perishable product" means—

(A) live plants provided for in subpart A of part 6 of schedule 1 of the TSUS;

(B) fresh or chilled vegetables provided for in items 135.10 through 138.46 of the TSUS;

(C) fresh mushrooms provided for in item 144.10 of the TSUS;

(D) fresh fruit provided for in items 146.10, 146.20, 146.30, 146.50 through 146.62, 146.90, 146.91, 147.03 through 147.33, 147.50 through 149.21 and 149.50 of the TSUS;

(E) fresh cut flowers provided for in items 192.17, 192.18, and 192.21 of the TSUS; and

(F) concentrated citrus fruit juice provided for in items 165.25 and 165.35 of the TSUS.

(g) No proclamation issued pursuant to this title shall affect fees imposed pursuant to section 22 of the Agricultural Adjustment Act (7 U.S.C. 624).

SEC. 214. MEASURES FOR PUERTO RICO AND UNITED STATES INSULAR POSSESSIONS.

[(a) Amendments of general headnote 3(a) to the TSUS relating to products of insular possessions.]

(b) Item 813.31 of the TSUS is amended by striking out "4 liters" and inserting in lieu thereof "5 liters", and by inserting after "United States,", "and not more than 4 liters of which shall have been produced elsewhere than in such insular possessions,".

(c) If the sum of the amounts of taxes covered into the treasuries of Puerto Rico or the United States Virgin Islands pursuant to section 7652(c) of the Internal Revenue Code of 1954 is reduced below the amount that would have been covered over if the imported rum had been produced in Puerto Rico or the United States Virgin Islands, then the President shall consider compensation measures and, in this regard, may withdraw the duty-free treatment on rum provided by this title. The President shall submit a report to the Congress on the measures he takes.

(d) Section 1112 of the Trade Agreements Act of 1979 (19 U.S.C. 2582) is repealed.

(e) No action pursuant to this title may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 (19 U.S.C. 1319) on coffee imported into Puerto Rico.

(f) For purposes of chapter 1 of title II of the Trade Act of 1974, the term "industry" shall include producers located in the United States insular possessions.

(g) Any discharge from a point source in the United States Virgin Islands in existence on the date of the enactment of this subsection which discharge is attributable to the manufacture of rum (as defined in paragraphs (3) of section 7652(c) of the Internal Revenue Code of 1954) shall not be subject to the requirements of section 301 (other than toxic pollutant discharges), section 306 or section 403 of the Federal Water Pollution Control Act if—

(1) such discharge occurs at least one thousand five hundred feet into the territorial sea from the line of ordinary low water from that portion of the coast which is in direct contact with the sea, and

(2) the Governor of the United States Virgin Islands determines that such discharge will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities.

SEC. 215. INTERNATIONAL TRADE COMMISSION REPORTS ON IMPACT OF THIS ACT.

(a) The United States International Trade Commission (hereinafter in this section referred to as the "Commission") shall prepare, and submit to the Congress and to the President, a report regarding the economic impact of this Act on United States industries and consumers during—

(1) the twenty-four-month period beginning with the date of enactment of this Act; and

(2) each calendar year occurring thereafter until duty-free treatment under this title is terminated under section 216(b).

For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States shall be considered to be United States industries.

(b)(1) Each report required under subsection (a) shall include, but not be limited to, an assessment by the Commission regarding—

(A) the actual effect, during the period covered by the report, of this Act on the United States economy generally as well as on those specific domestic industries which produce articles that are like, or directly competitive with, articles being imported into the United States from beneficiary countries; and

(B) the probable future effect which this Act will have on the United States economy generally, as well as on such domestic industries, before the provisions of this Act terminate.

(2) In preparing the assessments required under paragraph (1), the Commission shall, to the extent practicable—

(A) analyze the production, trade and consumption of United States products affected by this Act, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production; and

(B) describe the nature and extent of any significant change in employment, profit levels, and use of productive facilities, and such other conditions as it deems relevant in the domestic industries concerned, which it believes are attributable to this Act.

(c)(1) Each report required under subsection (a) shall be submitted to the Congress and to the President before the close of the nine-month period beginning on the day after the last day of the period covered by the report.

(2) The Commission shall provide opportunity for the submission by the public, either orally or in writing, or both, of information relating to matters that will be addressed in the reports.

SEC. 216. IMPACT STUDY BY SECRETARY OF LABOR.

The Secretary of Labor, in consulation with other appropriate Federal agencies, shall undertake a continuing review and analysis of the impact which the implementation of the provisions of this title have with respect to United States labor; and shall make an annual written report to Congress on the results of such review and analysis.

SEC. 217. FEASIBILITY STUDY REGARDING A CARIBBEAN TRADE INSTITUTE.

(a) The Secretary of State shall prepare a study regarding the feasibility of establishing a Caribbean Trade Institute in Harlem, New York City, supported by a combination of Federal and private funds.

(b) The study shall include, but not be limited to, an assessment of the extent to which, and the means by which, a Caribbean Trade Institute could—

(1) facilitate cooperation between public and private entities interested in engaging in or furthering Caribbean trade;

(2) serve as a catalyst for greater cultural exchange between the United States and Caribbean nations; and

(3) facilitate expansion of job opportunities both in the United States and the Caribbean Basin.

The study shall also include suggestions regarding the organization and staffing of such an institute.

(c) The study required by this section shall be submitted to the Congress within six months after the date of enactment of this Act.

SEC. 218. EFFECTIVE DATE OF SUBTITLE AND TERMINATION OF DUTY-FREE TREATMENT.

(a) EFFECTIVE DATE.—This subtitle shall take effect on the date of the enactment of this Act.

(b) TERMINATION OF DUTY-FREE TREATMENT.—No duty-free treatment extended to beneficiary countries under this subtitle shall remain in effect after September 30, 1995.

Subtitle B—Tax Provisions

SEC. 221. PAYMENT OF EXCISE TAXES COLLECTED ON RUM TO PUERTO RICO AND THE UNITED STATES VIRGIN ISLANDS.

(a) IN GENERAL.—Section 7652 of the Internal Revenue Code of 1954 (relating to shipments to the United States) is amended by inserting after subsection (b) the following new subsection:

"(c) SHIPMENTS OF RUM TO THE UNITED STATES.—

"(1) EXCISE TAXES ON RUM COVERED INTO TREASURIES OF PUERTO RICO AND VIRGIN ISLANDS.—All taxes collected under section 5001(a)(1) on rum imported into the United States (less the estimated amount necessary for payment of refunds and drawbacks) shall be covered into the treasuries of Puerto Rico and the Virgin Islands.

"(2) SECRETARY PRESCRIBES FORMULA.—The Secretary shall, from time to time, prescribe by regulation a formula for the division of such tax collections between Puerto Rico and the Virgin Islands and the timing and methods for transferring such tax collections.

"(3) RUM DEFINED.—For purposes of this subsection, the term 'rum' means any article classified under item 169.13 or 169.14 of the Tariff Schedules of the United States (19 U.S.C. 1202).

"(4) COORDINATION WITH SUBSECTIONS (a) AND (b).—Paragraph (1) shall not apply with respect to any rum subject to tax under subsection (a) or (b).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to articles imported into the United States after June 30, 1983.

SEC. 222. TREATMENT OF CARIBBEAN CONVENTIONS, ETC.

(a) GENERAL RULE.—Subsection (h) of section 274 of the Internal Revenue Code of 1954 (relating to attendance at conventions, etc.) is amended by adding at the end thereof the following new paragraph:

"(6) TREATMENT OF CONVENTIONS IN CERTAIN CARIBBEAN COUNTRIES.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'North American area' includes, with respect to any convention, seminar, or similar meeting, any beneficiary country if (as of the time such meeting begins)—

"(i) there is in effect a bilateral or multilateral agreement described in subparagraph (C) between such country and the United States providing for the exchange of information between the United States and such country, and

"(ii) there is not in effect a finding by the Secretary that the tax laws of such country discriminate against conventions held in the United States.

"(B) BENEFICIARY COUNTRY.—For purposes of this paragraph, the term 'beneficiary country' has the meaning given to such term by section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act; except that such term shall include Bermuda.

"(C) AUTHORITY TO CONCLUDE EXCHANGE OF INFORMATION AGREEMENTS.—

"(i) IN GENERAL.—The Secretary is authorized to negotiate and conclude an agreement for the exchange of information with any beneficiary country. Except as provided in clause (ii), an exchange of information agreement shall provide for the exchange of such information (not limited to information concerning nationals or residents of the United States or the beneficiary country) as may be necessary or appropriate to carry out and enforce the tax laws of the United States and the beneficiary country (whether criminal or civil proceedings), including information which may otherwise be subject to nondisclosure provisions of the local law of the beneficiary country such as provisions respecting bank secrecy and bearer shares. The exchange of information agreement shall be terminable by either country on reasonable notice and shall provide that information received by either country will be disclosed only to persons or authorities (including courts and administrative bodies) involved in the administration or oversight of, or in the determination of appeals in respect of, taxes of the United States or the beneficiary country and will be used by such persons or authorities only for such purposes.

"(ii) NONDISCLOSURE OF QUALIFIED CONFIDENTIAL INFORMATION SOUGHT FOR CIVIL TAX PURPOSES.—An exchange of information agreement need not provide for the exchange of qualified confidential information which is sought only for civil tax purposes if—

"(I) the Secretary of the Treasury, after making all reasonable efforts to negotiate an agreement which includes the exchange of such information, determines that such an agreement cannot be negotiated but that the agreement which was negotiated will significantly assist in the administration and enforcement of the tax laws of the United States, and

"(II) the President determines that the agreement as negotiated is in the national security interest of the United States.

(iii) QUALIFIED CONFIDENTIAL INFORMATION DEFINED.—For purposes of this subparagraph, the term 'qualified confidential information' means information which is subject to the nondisclosure provisions of any local law of the beneficiary country regarding bank secrecy or ownership of bearer shares.

"(iv) CIVIL TAX PURPOSES.—For purposes of this subparagraph, the determination of whether information is sought only for civil tax purposes shall be made by the requesting party.

"(D) COORDINATION WITH SECTION 6103.—Any exchange of information agreement negotiated under subparagraph (C) shall be treated as an income tax convention for purposes of section 6103(k)(4).

"(E) DETERMINATIONS PUBLISHED IN THE FEDERAL REGISTER.—The following shall be published in the Federal Register—

"(i) any determination by the President under subparagraph (C)(ii) (including the reasons for such determination),

"(ii) any determination by the Secretary under subparagraph (C)(ii) (including the reasons for such determination), and

"(iii) any finding by the Secretary under subparagraph (A)(ii) (and any termination thereof)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to conventions, seminars, or other meetings which begin after June 30, 1983.

SEC. 223. REPORT WITH RESPECT TO USE OF CARIBBEAN BASIN TAX HAVENS.

The Secretary of the Treasury shall, not later than ninety days after the date of the enactment of this Act, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on—

(1) the level at which Caribbean Basin tax havens are being used to evade or avoid Federal taxes, and the effect on Federal revenues of such use,

(2) any information he may have on the relationship of such use to drug trafficking and other criminal activities, and

(3) current antitax haven enforcement activities of the Department of the Treasury.

Subtitle C—Sense of the Congress Regarding Sugar Imports

SEC. 231. SUGAR IMPORTS.

It is the sense of the Congress that sugar from any Communist country in the Caribbean Basin or in Central America should not be imported into the United States.

Provisions of the Tax Reform Act of 1986 Relating to Treatment of Imports of Ethyl Alcohol

[P.L. 399-514]

(a) IN GENERAL.—Except as provided in subsection (b), no ethyl alcohol or a mixture thereof may be considered—

(1) for purposes of general headnote 3(a) of the Tariff Schedules of the United States, to be—

(A) the growth or product of an insular possession of the United States,

(B) manufactured or produced in an insular possession from materials which are the growth, product, or manufacture of any such possession, or

(C) otherwise eligible for exemption from duty under such headnote as the growth or product of an insular possession; or

(2) for purposes of section 213 of the Caribbean Basin Economic Recovery Act, to be—

(A) an article that is wholly the growth, product, or manufacture of a beneficiary country,

(B) a new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country,

(C) a material produced in a beneficiary country, or

(D) otherwise eligible for duty-free treatment under such Act as the growth, product, or manufacture of a beneficiary country:

unless the ethyl alcohol or mixture thereof is an indigenous product of that insular possession or beneficiary country.

(b) EXCEPTION.—

(1) Subject to the limitation in paragraph (2), subsection (a) shall not apply to ethyl alcohol that is imported into the United States during calendar years 1987 and 1988 and produced in—

(A) an azeotropic distillation facility located in an insular possession of the United States or a beneficiary country, if that facility was established before, and in operation on, January 1, 1986, or

(B) an azeotropic distillation facility—

(i) at least 50 percent of the total value of the equipment and components of which were—

(I) produced in the United States, and

(II) owned by a corporation at least 50 percent of the total value of the outstanding shares of stock of which were owned by a United States person (or persons) on or before January 1, 1986, and

(ii) substantially all of the equipment and components of which were, on or before January 1, 1986—

(I) located in the United States under the possession or control of such corporation,

(II) ready for shipment to, and installation in, a beneficiary country, and

(iii) which—

(I) has on the date of enactment of this Act, or

(II) will have at the time such facility is placed in service (based on estimates made before the date of enactment of this Act),

a stated capacity to produce not more than 42,000,000 gallons of such product per year.

(2) The exception provided under paragraph (1) shall cease to apply during each of calendar years 1987 and 1988 to ethyl al-

cohol produced in a facility described in subparagraph (A) or (B) of paragraph (1) after 20,000,000 gallons of ethyl alcohol produced in that facility are entered into the United States during that year.

(c) DEFINITIONS.—For purposes of this section—

(1) The term "ethyl alcohol or a mixture thereof" means (except for purposes of subsection (e)) ethyl alcohol or any mixture thereof described in item 901.50 of the Appendix to the Tariff Schedules of the United States.

(2) Ethyl alcohol or a mixture thereof may be treated as being an indigenous product of an insular possession or beneficiary country only if the ethyl alcohol or a mixture thereof—

(A) has been both dehydrated and produced by a process of full-scale fermentation within the insular possession or beneficiary country; or

(B) has been dehydrated within that insular possession or beneficiary country from hydrous ethyl alcohol that includes hydrous ethyl alcohol which is wholly the product or manufacture of any insular possession or beneficiary country and which has a value not less than—

(i) 30 percent of the value of the ethyl alcohol or mixture, if entered during calendar year 1987, except that this clause shall not apply to any ethyl alcohol or mixture which has been dehydrated in the United States Virgin Islands by a facility with respect to which—

(I) the owner has entered into a binding contract for the engineering and design of full-scale fermentation capacity, and

(II) authorization for operation of a full-scale fermentation facility has been granted by the Island authorities before May 1, 1986,

(ii) 60 percent of the value of the ethyl alcohol or mixture, if entered during calendar year 1988, and

(iii) 75 percent of the value of the ethyl alcohol or mixture, if entered after December 31, 1988.

(3) The term "beneficiary country" has the meaning given to such term under section 212 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702).

(4) The term "United States person" has the meaning given to such term by section 7701(a)(3) of the Internal Revenue Code of 1986.

(5) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(d) AMENDMENT TO APPENDIX TO SCHEDULES.—The item designation for item 901.50 of the Appendix to the Tariff Schedules of the United States is amended to read as follows: "Ethyl alcohol (provided for in item 427.88, part 2D, schedule 4) or any mixture containing such ethyl alcohol (provided for in part 1, 2 or 10, schedule 4) if such ethyl alcohol or mixture is to be used as fuel or in producing a mixture of gasoline and alcohol, a mixture of a special fuel and alcohol, or any other mixture to be used as fuel (including motor fuel provided for in item 475.25), or is suitable for any such uses."

(e) **Drawbacks.**—

(1) For purposes of subsections (b) and (j)(2) of section 313 of the Tariff Act of 1930 (19 U.S.C. 1313), as amended by section 1888(2) of this Act, any ethyl alcohol (provided for in item 427.88 of the Tariff Schedules of the United States) or mixture containing such ethyl alcohol (provided for in part 1, 2, or 10 of schedule 4 of such Schedules) which is subject to the additional duty imposed by item 901.50 of the Appendix to such Schedules may be treated as being fungible with, or of being of the same kind and quality as, any other imported ethyl alcohol (provided for in item 427.88 of such Schedules) or mixture containing such ethyl alcohol (provided for in part 1, 2, or 10 of schedule 4 of such Schedules) only if such other imported ethyl alcohol or mixture thereof is also subject to such additional duty.

(2) Paragraph (1) shall not apply with respect to ethyl alcohol (provided for in item 427.88 of the Tariff Schedules of the United States) or mixture containing such ethyl alcohol (provided for in part 1, 2, or 10 of schedule 4 of such Schedules) that is exempt from the additional duty imposed by item 901.50 of the Appendix to such Schedules by reason of—

(A) subsection (b), or

(B) any agreement entered into under section 102(b) of the Trade Act of 1974.

(f) **Conforming Amendments.**—

(1) [See General Headnote 3(a).]

(2) Section 213(a)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(1)) is amended by inserting "and subject to section 423 of the Tax Reform Act of 1986" after "Unless otherwise excluded from eligibility by this title,".

(3) The headnotes to subpart A of part 1 of the Appendix to the Tariff Schedules of the United States are amended by adding at the end thereof the following:

"2. For purposes of item 901.50, the phrase 'is suitable for any such uses' does not include ethyl alcohol (provided for in item 427.88, part 2D, schedule 4) that is certified by the importer of record to the satisfaction of the Commissioner of Customs (hereinafter in this headnote referred to as the 'Commissioner') to be ethyl alcohol or a mixture containing such ethyl alcohol imported for uses other than liquid motor fuel use or use in producing liquid motor fuel related mixtures. If the importer of record certifies nonliquid motor fuel use for purposes of establishing actual use or suitability under item 901.50, the Commissioner shall not liquidate the entry of ethyl alcohol until he is satisfied that the ethyl alcohol has in fact not been used for liquid motor fuel use or use in producing liquid motor fuel related mixtures. If he is not satisfied within a reasonable period of time not less than 18 months from the date of entry, then the duties provided for in item 901.50 shall be payable retroactive to the date of entry. Such duties shall also become payable, retroactive to the date of entry, immediately upon the diversion to liquid motor fuel use of any ethyl alcohol or ethyl alcohol mixture certified upon entry as having been imported for nonliquid motor fuel use."

(g) **Effective Period.**—

(1) The provisions of, and the amendments made by, this section (other than subsection (e)) shall apply to articles entered—

(A) after December 31, 1986, and

(B) before the expiration of the effective period of item 901.50 of the Appendix to the Tariff Schedules of the United States.

(2) The provisions of subsection (e) shall take effect on the date of the enactment of this Act.

D. CUSTOMS VALUATION

Section 402 of Tariff Act of 1930, as amended

[19 U.S.C. 1401(a); P.L. 71-361, as amended by P.L. 96-39, and P.L. 96-490]

SEC. 402. VALUE.

(a) In General.—(1) Except as otherwise specifically provided for in this Act, imported merchandise shall be appraised, for the purposes of this Act, on the basis of the following:

(A) The transaction value provided for under subsection (b).

(B) The transaction value of identical merchandise provided for under subsection (c), if the value referred to in subparagraph (A) cannot be determined, or can be determined but cannot be used by reason of subsection (b)(2).

(C) The transaction value of similar merchandise provided for under subsection (c), if the value referred to in subparagraph (B) cannot be determined.

(D) The deductive value provided for under subsection (d), if the value referred to in subparagraph (C) cannot be determined and if the importer does not request alternative valuation under paragraph (2).

(E) The computed value provided for under subsection (e), if the value referred to in subparagraph (D) cannot be determined.

(F) The value provided for under subsection (f), if the value referred to in subparagraph (E) cannot be determined.

(2) If the value referred to in paragraph (1)(C) cannot be determined with respect to imported merchandise, the merchandise shall be appraised on the basis of the computed value provided for under paragraph (1)(E), rather than the deductive value provided for under paragraph (1)(D), if the importer makes a request to that effect to the customs officer concerned within such time as the Secretary shall prescribe. If the computed value of the merchandise cannot subsequently be determined, the merchandise may not be appraised on the basis of the value referred to in paragraph (1)(F) unless the deductive value of the merchandise cannot be determined under paragraph (1)(D).

(3) Upon written request therefor by the importer of merchandise, and subject to provisions of law regarding the disclosure of information, the customs officer concerned shall provide the importer with a written explanation of how the value of that merchandise was determined under this section.

(b) Transaction Value of Imported Merchandise.—(1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to—

(A) the packing costs incurred by the buyer with respect to the imported merchandise;

(B) any selling commission incurred by the buyer with respect to the imported merchandise;

(C) the value, apportioned as appropriate, of any assist;

(D) any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and

(E) the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

The price actually paid or payable for imported merchandise shall be increased by the amounts attributable to the items (and no others) described in subparagraphs (A) through (E) only to the extent that each such amount (i) is not otherwise included within the price actually paid or payable; and (ii) is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in the preceding sentence, the transaction value of the imported merchandise concerned shall be treated, for purposes of this section, as one that cannot be determined.

(2)(A) The transaction value of imported merchandise determined under paragraph (1) shall be the appraised value of that merchandise for the purposes of this Act only if—

(i) there are no restrictions on the disposition or use of the imported merchandise by the buyer other than restrictions that—

(I) are imposed or required by law,

(II) limit the geographical area in which the merchandise may be resold, or

(III) do not substantially affect the value of the merchandise;

(ii) the sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consideration for which a value cannot be determined with respect to the imported merchandise;

(iii) no part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment therefor can be made under paragraph (1)(E); and

(iv) the buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable, for purposes of this subsection, under subparagraph (B).

(B) The transaction value between a related buyer and seller is acceptable for the purposes of this subsection if an examination of the circumstances of the sale of the imported merchandise indicates that the relationship between such buyer and seller did not influence the price actually paid or payable; or if the transaction value of the imported merchandise closely approximates—

(i) the transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States; or

(ii) the deductive value or computed value for identical merchandise or similar merchandise;

but only if each value referred to in clause (i) or (ii) that is used for comparison relates to merchandise that was exported to the United States at or about the same time as the imported merchandise.

(C) In applying the values used for comparison purposes under subparagraph (B), there shall be taken into account differences with respect to the sales involved (if such differences are based on sufficient information whether supplied by the buyer or otherwise available to the customs officer concerned) in—

(i) commercial levels;

(ii) quantity levels;

(iii) the costs, commissions, values, fees, and proceeds described in paragraph (1); and

(iv) the costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

(3) The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (1):

(A) Any reasonable cost or charge that is incurred for—

(i) the construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States; or

(ii) the transportaton of the merchandise after such importation.

(B) The customs duties and other Federal taxes currently payable on the imported merchandise by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable.

(4) For purposes of this subsection—

(A) The term "price actually paid or payable" means the total payment (whether direct or indirect, and exclusive of any costs, charges, or expenses incured for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

(B) Any rebate of, or other decrease in, the price actually paid or payable that is made or otherwise effected between the buyer and the seller after the date of the importation of the merchandise into the United States shall be disregarded in determining the transaction value under paragraph (1).

(c) Transaction Value of Identical Merchandise and Similar Merchandise.—(1) The transction value of identical merchandise, or of similar merchandise, is the transaction value (acceptable as the appraised value for purposes of this Act under subsection (b) but adjusted under paragraph (2) of this subsection) of imported merchandise that is—

(A) with respect to the merchandise being appraised, either identical merchandise or similar merchandise, as the case may be; and

(B) exported to the United States at or about the time that the merchandise being appraised is exported to the United States.

(2) Transaction values determined under this subsection shall be based on sales of identical merchandise or similar merchandise, as the case may be, at the same commercial level and in substantially the same quantity as the sales of the merchandise being appraised. If no such sale is found, sales of identical merchandise or similar merchandise at either a different commercial level or in different quantities, or both, shall be used, but adjusted to take account of any such difference. Any adjustment made under this paragraph shall be based on sufficient information. If in applying this paragraph with respect to any imported merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, such imported merchandise shall be appraised on the basis of the lower or lowest of such values.

(d) DEDUCTIVE VALUE.—(1) For purposes of this subsection, the term "merchandise concerned" means the merchandise being appraised, identical merchandise, or similar merchandise.

(2)(A) The deductive value of the merchandise being appraised is whichever of the following prices (as adjusted under paragraph (3)) is appropriate depending upon when and in what condition the merchandise concerned is sold in the United States:

(i) If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity at or about such date.

(ii) If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

(iii) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th day after the date of such importation. This clause shall apply to appraisement of merchandise only if the importer so elects and notifies the customs officer concerned of that election within such time as shall be prescribed by the Secretary.

(B) For purposes of subparagraph (A), the unit price at which merchandise is sold in the greatest aggregate quantity is the unit price at which such merchandise is sold to unrelated persons, at the first commercial level after importation (in cases to which subparagraph (A)(i) or (ii) applies) or after further processing (in cases to which subparagraph (A)(iii) applies) at which such sales take place, in a total volume that is (i) greater than the total volume sold at any other unit price, and (ii) sufficient to establish the unit price.

(3)(A) The price determined under paragraph (2) shall be reduced by an amount equal to—

(i) any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the United States of imported merchandise that is of the same class or kind, regardless of the country of exportation, as the merchandise concerned;

(ii) the actual costs and associated costs of transportation and insurance incurred with respect to international shipments of the merchandise concerned from the country of exportation to the United States;

(iii) the usual costs and associated costs of transportation and insurance incurred with respect to shipments of such merchandise from the place of importation to the place of delivery in the United States, if such costs are not included as a general expense under clause (i);

(iv) the customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable; and

(v) (but only in the case of a price determined under paragraph (2)(A)(iii)) the value added by the processing of the merchandise after importation to the extent that the value is based on sufficient information relating to cost of such processing.

(B) For purposes of applying paragraph (A)—

(i) the deduction made for profits and general expenses shall be based upon the importer's profits and general expenses, unless such profits and general expenses are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind, in which case the deduction shall be based on the usual profit and general expenses reflected in such sales, as determined from sufficient information; and

(ii) any State or local tax imposed on the importer with respect to the sale of imported merchandise shall be treated as a general expense.

(C) The price determined under paragraph (2) shall be increased (but only to the extent that such costs are not otherwise included) by an amount equal to the packing costs incurred by the importer or the buyer, as the case may be, with respect to the merchandise concerned.

(D) For purposes of determining the deductive value of imported merchandise, any sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned shall be disregarded.

(e) COMPUTED VALUE.—(1) The computed value of imported merchandise is the sum of—

(A) the cost of the value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;

(B) an amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;

(C) any assist, if its value is not included under subparagraph (A) or (B); and

(D) the packing costs.

(2) For purposes of paragraph (1)—

(A) the cost or value of materials under paragraph (1)(A) shall not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used; and

(B) the amount for profit and general expenses under paragraph (1)(B) shall be based upon the producer's profits and expenses, unless the producer's profits and expenses are inconsistent with those usually reflected in sales of merchandise of the same class of kind as the imported merchandise that are made by producers in the country of exportation for export to the United States, in which case the amount under paragraph (1)(B) shall be based on the usual profit and general expenses of such producers in such sales, as determined from sufficient information.

(f) VALUE IF OTHER VALUES CANNOT BE DETERMINED OR USED.—(1) If the value of imported merchandise cannot be determined, or otherwise used for purposes of this Act, under subsections (b) through (e), the merchandise shall be appraised for the purposes of this Act on the basis of a value that is derived from the methods set forth in such subsections, with such methods being reasonably adjusted to the extent necessary to arrive at a value.

(2) Imported merchandise may not be appraised, for the purposes of this Act, on the basis of—

(A) the selling price in the United States of merchandise produced in the United States;

(B) a system that provides for the appraisement of imported merchandise at the higher of two alternative values;

(C) the price of the merchandise in the domestic market of the country of exportation;

(D) a cost of production, other than a value determined under subsection (e) for merchandise being appraised;

(E) the price of the merchandise for export to a country other than the United States;

(F) minimum values for appraisement; or

(G) arbitrary or fictitious values.

This paragraph shall not apply with respect to the ascertainment, determination, or estimation of foreign market value or United States price under title VII.

(g) SPECIAL RULES.—(1) For purposes of this section, the persons specified in any of the following subparagraphs shall be treated as persons who are related:

(A) Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization.

(D) Partners.

(E) Employer and employee.

(F) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(G) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(2) For purposes of this section, merchandise (including, but not limited to, identical merchandise and similar merchandise) shall be treated as being of the same class or kind as other merchandise if it is within a group or range of merchandise produced by a particular industry or industry sector.

(3) For purposes of this section, information that is submitted by an importer, buyer, or producer in regard to the appraisement of merchandise may not be rejected by the customs officer concerned on the basis of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles. The term "generally accepted accounting principles" refers to any generally recognized consensus or substantial authoritative support regarding—

(A) which economic resources and obligations should be recorded as assets and liabilities;

(B) which changes in assets and liabilities should be recorded;

(C) how the assets and liabilities and changes in them should be measured;

(D) what information should be disclosed and how it should be disclosed; and

(E) which financial statements should be prepared.

The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the merchandise is sought to be established.

(h) DEFINITIONS.—As used in this section—

(1)(A) The term "assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

(i) Materials, components, parts, and similar items incorporated in the imported merchandise.

(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.

(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

(B) No service or work to which subparagraph (A)(iv) applies shall be treated as an assist for purposes of this section if such service or work—

(i) is performed by an individual who is domiciled within the United States;

(ii) is performed by that individual while he is acting as an employee or agent of the buyer of the imported merchandise; and

(iii) is incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within the United States.

(C) For purposes of this section, the following apply in determining the value of assists described in subparagraph (A)(iv):

(i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist.

(ii) If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value thereof that is added outside the United States.

(2) The term "identical merchandise" means—

(A) merchandise that is identical in all respects to, and was produced in the same country and by the same person as, the merchandise being appraised; or

(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B) (i), regardless of whether merchandise meeting such requirements can be found), merchandise that is identical in all respects to, and was produced in the same country as, but not produced by the same person as, the merchandise being appraised.

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(3) The term "packing costs" means the cost of all containers and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

(4) The term "similar merchandise" means—

(A) merchandise that—

(i) was produced in the same country and by the same person as the merchandise being appraised,

(ii) is like the merchandise being appraised in characteristics and component material, and

(iii) is commercially interchangeable with the merchandise being appraised; or

(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i), regardless of whether merchandise meeting such requirements can be found), merchandise that—

(i) was produced in the same country as, but not produced by the same person as, the merchandise being appraised, and

(ii) meets the requirement set forth in subparagraph (A)(ii) and (iii).

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(5) The term "sufficient information", when required under this section for determining—

(A) any amount—

(i) added under subsection (b)(1) to the price actually paid or payable,

(ii) deducted under subsection (d)(3) as profit or general expense or value from further processing, or

(iii) added under subsection (e)(2) as profit or general expense;

(B) any difference taken into account for purposes of subsection (b)(2)(C); or

(C) any adjustment made under subsection (c)(2);

means information that establishes the accuracy of such amount, difference, or adjustment.

(b) Repeal of Existing Alternative Valuation Standards.—Section 402a of the Tariff Act of 1930 (19 U.S.C. 1402) is repealed.

E. CUSTOMS USER FEES

Sections 13031, 13032 and 13033 of the Consolidated Budget Reconciliation Act of 1985, as amended

[19 U.S.C. 58c; P.L. 99-272, as amended by P.L. 99-509 and 99-514]

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) SCHEDULE OF FEES.—In addition to any other fee authorized by law, the Secretary of the Treasury shall charge and collect the following fees for the provision of customs services in connection with the following:

(1) For the arrival of a commercial vessel of 100 net tons or more, $397.

(2) For the arrival of a commercial truck, $5.

(3) For the arrival of each railroad car carrying passengers or commercial freight, $7.50.

(4) For all arrivals made during a calendar year by a private vessel or private aircraft, $25.

(5) For the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States (other than a place referred to in subsection (b)(1)(A)), $5.

(6) For each item of dutiable mail for which a document is prepared by a customs officer, $5.

(7) For each customs broker permit held by an individual, partnership, association, or corporate customs broker, $125 per year.

(8) For the arrival of a barge or other bulk carrier from Canada or Mexico, $100.

(9) For the processing of any merchandise (other than an article that is—

(A) provided for in schedule 8 of the Tariff Schedules of the United States,

(B) a product of an insular possession of the United States, or

(C) a product of any county listed in General Headnote 3(e)(vi) or (vii) of such Schedules)

that is formally entered, or withdrawn from warehouse for consumption—

(i) after November 30, 1986, and

(ii) before October 1, 1987;

a fee in an amount equal to 0.22 percent ad valorem.

(10) For the processing of any merchandise (other than an article described in subparagraph (A), (B), or (C) of paragraph (9)) that is formally entered, or withdrawn from warehouse for consumption, during any fiscal year occurring after September 30, 1987; a fee in an amount equal to the lesser of—

(A) 0.17 percent ad valorem, or

(B) an ad valorem rate which the Secretary of the Treasury estimates will provide a total amount of revenue during the fiscal year equal to—

(i) the total amount authorized to be appropriated for such fiscal year to the United States Customs Service for salaries and expenses incurred in conducting commercial operations during such fiscal year, reduced by

(ii) the excess, if any, of—

(I) the total amount authorized to be appropriated for such salaries and expenses for such fiscal year, over

(II) the total amount actually appropriated for such salaries and expenses for such fiscal year;

except that if appropriations are not authorized for a fiscal year, the fee imposed under this paragraph with respect to that year shall be in an amount equal to 0.17 percent ad valorem.

(b) LIMITATIONS OF FEES.—(1) No fee may be charged under subsection (a) for customs services provided in connection with—

(A) the arrival of any passenger whose journey—

(i) originated in—

(I) Canada,

(II) Mexico,

(III) a territory or possession of the United States, or

(IV) any adjacent island (within the meaning of section 101(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(5)), or

(ii) originated in the United States and was limited to—

(I) Canada,

(II) Mexico,

(III) territories and possessions of the United States, and

(IV) such adjacent islands;

(B) the arrival of any railroad car that is part of a train which originates and terminates in the same country, but only if—

(i) such car is part of such train when such train departs from the United States, and

(ii) no passengers board or disembark from such train, and no cargo is loaded or unloaded from such train, while such train is within any country other than the country in which such train originates and terminates; or

(C) the arrival of any ferry.

(2) No fee may be charged under subsection (a)(2) for the arrival of a commercial truck during any calendar year after a total of $100 in fees has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such commercial truck during such calendar year.

(3) No fee may be charged under subsection (a)(3) for the arrival of a railroad car whether passenger or freight during any calendar year after a total of $100 in fees has been paid to the Secretary of

the Treasury for the provision of customs services for all arrivals of such passenger or freight rail car during such calendar year.

(4) No fee may be charged under subsection (a)(5) with respect to the arrival of any passenger—

(A) who is in transit to a destination outside the customs territory of the United States, and

(B) for whom customs inspectional services are not provided.

(5) No fee may be charged under subsection (a)(1) for the arrival of—

(A) a vessel during a calendar year after a total of $5,955 in fees charged under paragraph (1) or (8) of subsection (a) has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such vessel during such calendar year,

(B) any vessel which, at the time of the arrival, is being used solely as a tugboat, or

(C) any barge or other bulk carrier from Canada or Mexico.

(6) No fee may be charged under section (a)(8) for the arrival of a barge or other bulk carrier during a calendar year after a total of $1,500 in fees charged under paragraph (1) or (8) of subsection (a) has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such barge or other bulk carrier during such calendar year.

(7) No fee may be charged under paragraphs (2), (3), or (4) of subsection (a) for the arrival of any—

(A) commercial truck,

(B) railroad car, or

(C) private vessel,

that is being transported, at the time of the arrival, by any vessel that is not a ferry.

(8)(A) The fee charged under subsection (a) (9) or (10) with respect to the processing of merchandise shall—

(i) be paid by the importer of record of the merchandise; and

(ii) be based on the value of the merchandise as determined under section 402 of the Tariff Act of 1930.

(B)(i) By no later than the date that is 5 days after the date on which any funds are appropriated to the United States Customs Service for salaries or expenses incurred in conducting commercial operations, the Secretary of the Treasury shall determine the ad valorem rate of the fee charged under subsection (a)(10) and shall publish the determination in the Federal Register. Such ad valorem rate shall apply with respect to services provided for the processing of entries, and withdrawals from warehouse, for consumption made after the date that is 60 days after the date of such determination.

(ii) No determination is required under clause (i) with respect to an appropriation to the United States Customs Service if the funds appropriated are available for less than 60 days.

(9) The Secretary may reduce by an amount he considers equitable the fees charged under subsection (a) for the processing of merchandise entries at facilities at which users reimburse the United States Customs Service, pursuant to section 9701 of title 31, United

States Code, or section 236 of the Trade and Tariff Act of 1984 (19 U.S.C. 58b), for the services that it provides at the facilities.

(c) DEFINITIONS.—For purposes of this section—

(1) The term "ferry" means any vessel which is being used—

(A) to provide transportation only between places that are no more than 300 miles apart, and

(B) to transport only—

(i) passengers, or

(ii) vehicles, or railroad cars, which are being used, or have been used, in transporting passengers or goods, and

(2) The term "arrival" means arrival at a port of entry in the customs territory of the United States.

(3) The term "customs territory of the United States" has the meaning given to such term by headnote 2 of the General Headnotes and Rules of Interpretation of the Tariff Schedules of the United States.

(4) The term "customs broker permit" means a permit issued under section 641(c) of the Tariff Act of 1930 (19 U.S.C. 1641(c)).

(5) The term "barge or other bulk carrier" means any vessel which—

(A) is not self-propelled, or

(B) transports fungible goods that are not packaged in any form.

(d) COLLECTION.—(1) Each person that issues a document or ticket to an individual for transportation by a commercial vessel or commercial aircraft into the customs territory of the United States shall—

(A) collect from that individual the fee charged under subsection (a)(5) at the time the document or ticket is issued; and

(B) separately identify on that document or ticket the fee charged under subsection (a)(5) as a Federal inspection fee.

(2) If—

(A) a document or ticket for transportation of a passenger into the customs territory of the United States is issued in a foreign country; and

(B) the fee charged under subsection (a)(5) is not collected at the time such document or ticket is issued;

the person providing transportation to such passenger shall collect such fee at the time such passenger departs from the customs territory of the United States and shall provide such passenger a receipt for the payment of such fee.

(3) The person who collects fees under paragraph (1) or (2) shall remit those fees to the Secretary of the Treasury at any time before the date that is 31 days after the close of the calendar quarter in which the fees are collected.

(4)(A) Notice of the date on which payment of the fee imposed by subsection (a)(7) is due shall be published by the Secretary of the Treasury in the Federal Register by no later than the date that is 60 days before such due date.

(B) A customs broker permit may be revoked or suspended for nonpayment of the fee imposed by subsection (a)(7) only if notice of the date on which payment of such fee is due was published in the Federal Register at least 60 days before such due date.

(C) The customs broker's license issued under section 641(b) of the Tariff Act of 1930 (19 U.S.C. 1641(b)) may not be revoked or suspended merely by reason of nonpayment of the fee imposed under subsection (a)(7).

(e)(1) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than paragraph (2)), the customs services required to be provided to passengers upon arrival in the United States shall be adequately provided in connection with scheduled airline flights at customs serviced airports when needed and at no cost (other than the fees imposed under subsection (a)) to airlines and airline passengers."

(2) This subsection shall not apply with respect to any airport to which section 236(c) of the Trade and Tariff Act of 1984 (19 U.S.C. 58b(c)) applies.

(3) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law—

(A) the customs services required to be provided to passengers upon arrival in the United States shall be adequately provided in connection with scheduled airline flights when needed at places located outside the customs territory of the United States at which a customs officer is stationed for the purpose of providing such customs services, and

(B) other than the fees imposed under subsection (a), the airlines and airline passengers shall not be required to reimburse the Secretary of the Treasury for the costs of providing overtime customs inspectional services at such places.

(4) Notwithstanding any other provision of law, during any period when fees are authorized under subsection (a), no charges, other than such fees, may be collected for—

(A) any cargo inspection, clearance, or other customs service performed (regardless whether performed outside of normal business hours on an overtime basis); or

(B) any customs personnel provided;

in connection with the arrival or departure of any commercial vessel, vehicle or aircraft, or its passengers, crew, and cargo, in the United States.

(f) Disposition of Fees.—(1) Notwithstanding section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), all of the fees collected under subsection (a) shall be deposited in a separate account within the general fund of the Treasury of the United States. Such account shall be known as the "Customs User Fee Account".

(2)(A) The Secretary of the Treasury shall refund out of the Customs User Fee Account to any appropriation the amount paid out of such appropriation for expenses incurred by the Secretary of the Treasury in providing overtime customs inspectional services for which the recipient of such services is not required to reimburse the Secretary of the Treasury.

(B) The amounts which are required to be refunded under subparagraph (A) shall be refunded at least quarterly on the basis of estimates made by the Secretary of the Treasury of the expenses referred to in subparagraph (A). Proper adjustments shall be made in the amount subsequently refunded under subparagraph (A) to the extent prior estimates were in excess of, or less than, the amounts required to be refunded under subparagraph (A).

(3) Except as provided in paragraph (2), all funds in the Customs User Fee Account shall only be available, to the extent provided for in appropriation Acts, for the salaries and expenses of the United States Customs Service incurred in conducting commercial operations.

(4) At the close of fiscal year 1988 and each even-numbered fiscal year occurring thereafter, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding how the fees imposed under subsection (a) should be adjusted in order that the balance of the Customs User Fee Account approximates a zero balance. Before making recommendations regarding any such adjustments, the Secretary of the Treasury shall provide adequate opportunity for public comment. The recommendations shall, as precisely as possible, propose fees which reflect the actual costs to the United States Government for the commercial services provided by the United States Customs Service.

(g) REGULATIONS.—The Secretary of the Treasury may prescribe such rules and regulations as may be necessary to carry out the provisions of this section. Regulations issued by the Secretary of the Treasury under this subsection with respect to the collection of the fees charged under subsection (a)(5) and the remittance of such fees to the Treasury of the United States shall be consistent with the regulations issued by the Secretary of the Treasury for the collection and remittance of the taxes imposed by subchapter C of chapter 33 of the Internal Revenue Code of 1954, but only to the extent the regulations issued with respect to such taxes do not conflict with the provisions of this section.

(h) CONFORMING AMENDMENTS.—(1) Subsection (i) of section 305 of the Rail Passenger Service Act (45 U.S.C. 545(i)) is amended by striking out the last sentence thereof.

(2) Subsection (e) of section 53 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1741(e)) is repealed. [See section 1893(f) of the Tax Reform Act of 1986 (P.L. 99-514).]

(i) EFFECT ON OTHER AUTHORITY.—Except with respect to customs services for which fees are imposed under subsection (a), nothing in this section shall be construed as affecting the authority of the Secretary of the Treasury to charge fees under section 214(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 58a).

(j) EFFECTIVE DATES.—(1) Except as otherwise provided in this subsection, the provisions of this section, and the amendments and repeals made by this section, shall apply with respect to customs services rendered after the date that is 90 days after the date of enactment of this Act.

(2) Fees may be charged under subsection (a)(5) only with respect to customs services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after the date that is 90 days after such date of enactment.

(3) Fees may not be charged under subsection (a) after September 30, 1989.

SEC. 13032. USER FEES FOR CUSTOMS SERVICES AT CERTAIN SMALL AIRPORTS.

Section 236 of the Trade and Tariff Act of 1984 (19 U.S.C. 58b) is amended—

(1) by striking out "4 airports" in subsection (c) and inserting in lieu thereof "20 airports"; and

(2) by striking out the last sentence in subsection (e) and inserting in lieu thereof the following new sentences: "The Secretary of the Treasury is authorized and directed to pay out of any funds available in such account any expenses incurred by the Federal Government in providing customs services at such airport (including expenses incurred for the salaries and expenses of individuals employed to provide such services). None of the funds deposited into such account shall be available for any purpose other than making payments authorized under the preceding sentence.".

SEC. 13033. ADVISORY COMMITTEE.

In accordance with the provisions of the Federal Advisory Committee Act, the Secretary of the Treasury shall establish an advisory committee, whose membership shall consist of representatives from the airline, shipping, and other transportation industries, the general public, and others who may be subject to any fee or charge (1) authorized by law, or (2) proposed by the United States Customs Service for the purpose of covering expenses incurred by the Customs Service. The advisory committee shall meet on a periodic basis and shall advise the Secretary on issues related to the performance of the customs services. This advice shall include, but not be limited to, such issues as the time periods during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. The Secretary shall give substantial consideration to the views of the advisory committee in the exercise of his duties.

Section 1893 of the Tax Reform Act of 1986

[P.L. 99-514]

SEC. 1893.

(c)(2) Notwithstanding section 13031(a)(7) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(7)), the fee imposed by section 13031(a) of such Act with respect to each customs broker permit held by an individual, partnership, association, or corporate customs broker for calendar year 1986 is $62.50.

(3)(A) The Secretary of the Treasury shall reinstate any customs broker's license or customs broker permit issued under subsection (b) or (c) of section 641 of the Tariff Act of 1930 (19 U.S.C. 1641) that was suspended or revoked on or before the date of enactment of this Act solely by reason of nonpayment of the fee imposed by section 13031(a)(7) of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(B) Notwithstanding any other provision of law, the Secretary of the Treasury may not suspend or revoke any customs broker permit issued under section 641(c) of the Tariff Act of 1930 (19 U.S.C. 1641(c)) solely by reason of nonpayment of the fee imposed by section 13031(a)(7) of the Consolidated Omnibus Budget Reconciliation Act of 1985 before the date that is 60 days after the date of enactment of this Act.

(f) REINSTATING LIMIT ON CHARGES FOR OTHER INSPECTION SERVICES.—Section 53 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1741), as amended by section 1303(h)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is further amended by adding at the end thereof the following new subsection:

"(e)(1) The cost of any inspection or quarantine service which is required to be performed by the Federal Government or any agency thereof at airports of entry or other places of inspection as a consequence of the operation of aircraft, and which is performed during regularly established hours of service on Sundays or holidays shall be reimbursed by the owners or operators of such aircraft only to the same extent as if such service had been performed during regularly established hours of service on weekdays. Notwithstanding any other provision of law, administrative overhead costs associated with any inspection or quarantine service required to be performed by the United States Government, or any agency thereof, at airports of entry as a result of the operation of aircraft, shall not be assessed against the owners or operators thereof.

"(2) Nothing in this subsection may be construed as requiring reimbursement for costs incurred by the Secretary of the Treasury in providing customs services described in section 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985."

(g) EFFECTIVE DATE; REFUNDS.—

(1) The amendments made by this section shall apply with respect to services rendered after the date that is 15 days after the date of enactment of this Act.

(2) Upon written request filed by any person with the Secretary of the Treasury (hereafter in this subsection referred to as the "Secretary") before the date that is 90 days after the date of enactment of this Act which is accompanied by such documentation establishing proof of payment as the Secretary may require, the Secretary shall refund (out of funds in the Treasury of the United States not otherwise appropriated) to such person an amount equal to the excess of—

(A) the amount of fees imposed by section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 that were paid by such person to the Secretary with respect to customs services provided—

(i) after July 6, 1986, and

(ii) on or before the date that is 15 days after the date of enactment of this Act, over

(B) the amount of fees such person would have been required to pay to the Secretary by reason of such section with respect to such services if the amendments made by subsections (a)(1) and (b) applied with respect to such services.

(3) If the customs broker permit fee paid by any person for calendar year 1986 under section 13031(a)(7) of the Consolidated Omnibus Budget Reconciliation Act of 1985 exceeds $62.50, the Secretary shall either—

(A) refund (out of funds in the Treasury of the United States not otherwise appropriated) to such person the amount of the excess, or

(B) if requested by such person, credit the amount of the excess to the fee due under such section 13031(a)(7) with respect to such permit for calendar year 1987.

F. OTHER CUSTOMS LAWS

1. Country of Origin Marking

Section 304 of Tariff Act of 1930, as amended

[19 U.S.C. 1304; P.L. 71-361, as amended by P.L. 98-573 and P.L. 99-514]

SEC. 304. MARKING OF IMPORTED ARTICLES AND CONTAINERS.

(a) Marking of Articles.—Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. The Secretary of the Treasury may by regulations—

(1) Determine the character of words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin and prescribe any reasonable method of marking, whether by printing, stenciling, stamping, branding, labeling, or by any other reasonable method, and a conspicuous place on the article (or container) where the marking shall appear;

(2) Require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of the ariticle or as to the origin of any other article with which such imported article is usually combined subsequent to importation but before delivery to an ultimate purchaser; and

(3) Authorize the exception of any article from the requirements of marking if—

(A) Such article is incapable of being marked;

(B) Such article cannot be marked prior to shipment to the United States without injury;

(C) Such article cannot be marked prior to shipment to the United States, except at an expense economically prohibitive of its importation;

(D) The marking of a container of such article will reasonably indicate the origin of such article;

(E) Such article is a crude substance;

(F) Such article is imported for use by the importer and not intended for sale in its imported or any other form;

(G) Such article is to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the origin of such article and in such manner that any mark contemplated by this section would necessarily be obliterated, destroyed, or permanently concealed;

(H) An ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation, must necessarily know the country of origin of such article even though it is not marked to indicate its origin;

(I) Such article was produced more than twenty years prior to its importation into the United States;

(J) Such article is of a class or kind with respect to which the Secretary of the Treasury has given notice by publication in the weekly Treasury Decisions within two years after July 1, 1937, that articles of such class or kind were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin: *Provided*,. That this subdivision shall not apply after September 1, 1938, to sawed lumber and timbers, telephone, trolley, electric-light, and telegraph poles of wood, and bundles of shingles; but the President is authorized to suspend the effectiveness of this proviso if he finds such action required to carry out any trade agreement entered into under the authority of the Act of June 12, 1934 (U.S.C., 1934 edition, title 19, sections 1351, 1352, 1353, 1354), as extended; or

(K) Such article cannot be marked after importation except at an expense which is economically prohibitive, and the failure to mark the article before importation was not due to any purpose of the importer, producer, seller, or shipper to avoid compliance with this section.

(b) MARKING OF CONTAINERS.—Whenever an article is excepted under subdivision (3) of subsection (a) of this section from the requirements of marking, the immediate container if any, of such article, or such other container or containers of such article as may be prescribed by the Secretary of the Treasury, shall be marked in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of such article, subject to all provisions of this section, including the same exceptions as are applicable to articles under subdivision (3) of subsection (a) of this section. If articles are excepted from marking requirements under clause (F), (G), or (H) of subdivision (3) of subsection (a) of this section, their usual containers shall not be subject to the marking requirements of this section. Usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin.

(c) MARKING OF CERTAIN PIPE AND FITTINGS.—(1) Except as provided in paragraph (2), no exception may be made under subsection (a)(3) with respect to pipes of iron, steel, or stainless steel, to pipe fittings of steel, stainless steel, chrome-moly steel, or cast and malleable iron each of which shall be marked with the English name of the country or origin by means of die stamping, cast-in-mold lettering, etching, or engraving.

(2) If, because of the nature of an article, it is technically or commercially infeasible to mark it by one of the four methods specified in paragraph (1), the article may be marked by an equally permanent method of marking such as paint stenciling or, in the case of

small diameter pipe, tube, and fittings, by tagging the containers or bundles.

(d) Marking of Compressed Gas Cylinders.—No exception may be made under subsection (a)(3) with respect to compressed gas cylinders designed to be used for the transport and storage of compressed gases whether or not certified prior to exportation to have been made in accordance with the safety requirements of sections 178.36 through 178.68 of title 49, Code of Federal Regulations, each of which shall be marked with the English name of the country of origin by means of die stamping, molding, etching, raised lettering, or an equally permanent method of marking.

(e) Marking of Certain Manhole Rings or Frames, Covers, and Assemblies Thereof.—No exception may be made under subsection (a)(3) with respect to manhole rings or frames, covers, and assemblies thereof each of which shall be marked on the top surface with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, or engraving.

(f) Additional Duties for Failure to Mark.—If at the time of importation any article (or its container, as provided in subsection (b) of this section) is not marked in accordance with the requirements of this section, and if such article is not exported or destroyed or the article (or its container, as provided in subsection (b) of this section) marked after importation in accordance with the requirements of this section (such exportation, destruction, or marking to be accomplished under customs supervision prior to the liquidation of the entry covering the article, and be allowed whether or not the article has remained in continuous customs custody), there shall be levied, collected, and paid upon such article a duty of 10 per centum ad valorem, which shall be deemed to have accrued at the time of importation, shall not be construed to be penal, and shall not be remitted wholly or in part nor shall payment thereof be avoidable for any cause. Such duty shall be levied, collected, and paid in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary customs duties. The compensation and expenses of customs officers and employees assigned to supervise the exportation, destruction, or marking to exempt articles from the application of the duty provided for in this subsection shall be reimbursed to the Government by the importer.

(g) Delivery Withheld Until Marked.—No imported article held in customs custody for inspection, examination, or appraisement shall be delivered until such article and every other article of the importation (or their containers), whether or not released from customs custody, shall have been marked in accordance with the requirements of this section or until the amount of duty estimated to be payable under subsection (f) of this section has been deposited. Nothing in this section shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

(h) Penalties.—If any person shall, with intent to conceal the information given thereby or contained therein, deface, destroy, remove, alter, cover, obscure, or obliterate any mark required under the provisions of this chapter, he shall, upon conviction, be fined not more than $5,000 or imprisoned not more than one year, or both.

2. Drawback

Section 313 of Tariff Act of 1930, as amended

[19 U.S.C. 1313; P.L. 71-361, as amended by Act of June 26, 1936; Act of Aug. 8, 1951; Act of Aug. 8, 1953; Act of Aug. 6, 1956; P.L. 85-373; P.L. 90-630; P.L. 91-692; P.L. 96-609; P.L. 98-573; and P.L. 99-514]

SEC. 313. DRAWBACK AND REFUNDS.

(a) ARTICLES MADE FROM IMPORTED MERCHANDISE.—Upon the exportation of articles manufactured or produced in the United States with the use of imported merchandise, the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1 per centum of such duties, except that such duties shall not be so refunded upon the exportation of flour or by-products produced from wheat imported after ninety days after June 17, 1930. Where two or more products result from the manipulation of imported merchandise, the drawback shall be distributed to the several products in accordance with their relative values at the time of separation.

(b) SUBSTITUTION FOR DRAWBACK PURPOSES.—If imported duty-paid merchandise and duty-free or domestic merchandise of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported; but the total amount of drawback allowed upon the exportation of such articles, together with the total amount of drawback allowed in respect of such imported merchandise under any other provision of law, shall not exceed 99 per centum of the duty paid on such imported merchandise.

(c) MERCHANDISE NOT CONFORMING TO SAMPLE OR SPECIFICATIONS.—Upon the exportation of merchandise not conforming to sample or specifications or shipped without the consent of the consignee upon which the duties have been paid and which have been entered or withdrawn for consumption and, within ninety days after release from customs custody, unless the Secretary authorizes in writing a longer time, returned to customs custody for exportation, the full amount of the duties paid upon such merchandise shall be refunded as drawback, less 1 per centum of such duties.

(d) FLAVORING EXTRACTS; MEDICINAL OR TOILET PREPARATIONS; BOTTLED DISTILLED SPIRITS AND WINES.—Upon the exportation of flavoring extracts, medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from domestic alcohol on which an internal-revenue tax has been paid, there shall be allowed a drawback equal in amount to the tax found to have been paid on the alcohol so used.

Upon the exportation of bottled distilled spirits and wines manufactured or produced in the United States on which an internal-revenue tax has been paid or determined, there shall be allowed, under regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, a drawback equal in amount to the tax found to have been paid or determined on such bottled distilled spirits, the preceding sentence shall not apply unless the claim for drawback is filed by the bottler or packager of the spirits have been stamped or restamped, and marked, especially for export, under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

(e) IMPORTED SALT FOR CURING FISH.—Imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish on the shores of the navigable waters of the United States, whether such fish are taken by licensed or unlicensed vessels, and upon proof that the salt has been used for either of such purposes, the duties on the same shall be remitted.

(f) EXPORTATION OF MEATS CURED WITH IMPORTED SALT.—Upon the exportation of meats, whether packed or smoked, which have been cured in the United States with imported salt, there shall be refunded, upon satisfactory proof that such meats have been cured with imported salt, the duties paid on the salt so used in curing such exported meants, in amounts not less than $100.

(g) MATERIALS FOR CONSTRUCTION AND EQUIPMENT OF VESSELS BUILT FOR FOREIGNERS.—The provisions of this section shall apply to materials imported and used in the construction and equipment of vessels built for foreign account and ownership, or for the government of any foreign country, notwithstanding that such vessels may not within the strict meaning of the term be articles exported.

(h) JET AIRCRAFT ENGINES.—Upon the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts, there shall be refunded, upon satisfactory proof that such imported merchandise has been so used, the duties which have been paid thereon, in amounts not less than $100.

(i) TIME LIMITATION ON EXPORTATION.—No drawback shall be allowed under the provisions of this section unless the completed article is exported within five years after importation of the imported merchandise.

(j) SAME CONDITION DRAWBACK. (1) If imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law because of its importation—

(A) is, before the close of the three-year period beginning on the date of importation—

(i) exported in the same condition as when imported, or

(ii) destroyed under Customs supervision; and

(B) is not used within the United States before such exportation or destruction;

then upon such exportation or destruction 99 per centum of the amount of each such duty, tax, and fee so paid shall be refunded as drawback.

(2) If there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation, any other merchandise (whether imported or domestic) that—

(A) is fungible with such imported merchandise;

(B) is, before the close of the three-year period beginning on the date of importation of the imported merchandise, either exported or destroyed under Customs supervision;

(C) before such exportation or destruction—

(i) is not used within the United States, and

(ii) is in the possession of the party claiming drawback under this paragraph; and

(D) is in the same condition at the time of exportation or destruction as was the imported merchandise at the time of its importation;

then upon the exportation or destruction of such other merchandise the amount of each such duty, tax, and fee paid regarding the imported merchandise shall be refunded as drawback, but in no case may the total drawback on the imported merchandise, whether available under this paragraph or any other provision of law or any combination thereof, exceed 99 percent of that duty, tax, or fee.

(3) Packaging material that is imported for use in packaging or repackaging imported merchandise to which paragraph (1) applies shall be eligible under the same conditions provided in such paragraph for refund, as drawback, of 99 per centum of any duty, tax, of fee imposed under Federal law on the importation of such material.

(4) The performing of incidental operations (including, but not limited to, testing, cleaning, repacking, and inspecting) on—

(A) the imported merchandise itself in cases to which paragraph (1) applies, or,

(B) the merchandise of the same kind and quality in cases to which paragraph (2) applies,

that does not amount to manufacture or production for drawback purposes under the preceding provisions of this section shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).

(k) For purposes of subsections (a) and (b), the use of any domestic merchandise acquired in exchange for imported merchandise of the same kind and quality shall be treated as the use of such imported merchandise if no certificate of delivery is issued with respect to such imported merchandise.

(l) REGULATIONS.—Allowance of the privileges provided for in this section shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe, which may include, but need not be limited to, the fixing of a time limit within which drawback entries or entries for refund under any of the provisions of this section or section 1309(b) of this title shall be filed and completed, and the designation of the person to whom any refund or payment of drawback shall be made.

(m) SOURCE OF PAYMENT.—Any drawback of duties that may be authorized under the provisions of this chapter shall be paid from the customs receipts of Puerto Rico, if the duties were originally paid into the Treasury of Puerto Rico.

3. Copyrights and Trademark Enforcement

Section 101 of Copyright Revision Act of 1976

[17 U.S.C. 602; P.L. 94-553]

SEC. 602. INFRINGING IMPORTATION OF COPIES OR PHONORECORDS

(a) Importation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501. This subsection does not apply to—

(1) importation of copies or phonorecords under the authority or for the use of the Government of the United States or of any State or political subdivision of a State, but not including copies or phonorecords for use in schools, or copies of any audiovisual work imported for purposes other than archival use;

(2) importation, for the private use of the importer and not for distribution, by any person with respect to no more than one copy or phonorecord of any one work at any one time, or by any person arriving from outside the United States with respect to copies or phonorecords forming part of such person's personal baggage; or

(3) importation by or for an organization operated for scholarly, educational, or religious purposes and not for private gain, with respect to no more than one copy of an audiovisual work solely for its archival purposes, and no more than five copies or phonorecords of any other work for its library lending or archival purposes, unless the importation of such copies or phonorecords is part of an activity consisting of systematic reproduction or distribution, engaged in by such organization in violation of the provisions of section 108(g)(2).

(b) In a case where the making of the copies or phonorecords would have constituted an infringement of copyright if this title had been applicable, their importation is prohibited. In a case where the copies of phonorecords were lawfully made, the United States Customs Service has no authority to prevent their importation unless the provisions of section 601 are applicable. In either case, the Secretary of the Treasury is authorized to prescribe, by regulation, a procedure under which any person claiming an interest in the copyright in a particular work may, upon payment of a specified fee, be entitled to notification by the Customs Service of the importation of articles that appear to be copies or phonorecords of the work.

Section 526 of Tariff Act of 1930, as amended

[19 U.S.C. 1526; P.L. 71-361, as amended by P.L. 93-596 and P.L. 95-410]

SEC. 526. MERCHANDISE BEARING AMERICAN TRADEMARK.

(a) IMPORTATION PROHIBITED.—Except as provided in subsection (d) of this section, it shall be unlawful to import into the United States any merchandise of foreign manufacture if such merchandise, or the label, sign, print, package, wrapper, or receptacle, bears a trademark owned by a citizen of, or by a corporation or association created or organized within, the United States, and registered in the Patent and Trademark Office by a person domiciled in the United States, under the provisions of sections 81 to 109 of Title 15, and if a copy of the certificate of registration of such trademark is filed with the Secretary of the Treasury, in the manner provided in 15 U.S.C. 106, unless written consent of the owner of such trademark is produced at the time of making entry.

(b) SEIZURE AND FORFEITURE.—Any such merchandise imported into the United States in violation of the provisions of this section shall be subject to seizure and forfeiture for violation of the customs laws.

(c) INJUNCTION AND DAMAGES.—Any person dealing in any such merchandise may be enjoined from dealing therein within the United States or may be required to export or destroy such merchandise or to remove or obliterate such trademark and shall be liable for the same damages and profits provided for wrongful use of a trademark, under the provisions of sections 81 to 109 of Title 15.

(d) EXEMPTIONS; PUBLICATIONS IN FEDERAL REGISTER; FORFEITURE; RULES AND REGULATIONS.—

(1) The trademark provisions of this section and section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), do not apply to the importation of articles accompanying any person arriving in the United States when such articles are for his personal use and not for sale if (A) such articles are within the limits of types and quantities determined by the Secretary pursuant to paragraph (2) of this subsection, and (B) such person has not been granted an exemption under this subsection within thirty days immediately preceding his arrival.

(2) The Secretary shall determine and publish in the Federal Register lists of the types of articles and the quantities of each which shall be entitled to the exemption provided by this subsection. In determining such quantities of particular types of trademarked articles, the Secretary shall give such consideration as he deems necessary to the numbers of such articles usually purchased at retail for personal use.

(3) If any article which has been exempted from the restrictions on importation of the trademark laws under this subsection is sold within one year after the date of importation, such article, or its value (to be recovered from the importer), is subject to forfeiture. A sale pursuant to a judicial order or in liquidation of the estate of a decedent is not subject to the provisions of this paragraph.

(4) The Secretary may prescribe such rules and regulations as may be necessary to carry out the provisions of this subsection.

(e) MERCHANDISE BEARING COUNTERFEIT MARK; SEIZURE AND FORFEITURE; DISPOSITION OF SEIZED GOODS.—Any such merchandise bearing a counterfeit mark (within the meaning of section 45 of the Act of July 5, 1946 (commonly referred to as the Lanham Act, 60 Stat. 427; 15 U.S.C. 1127)) imported into the United States in violation of the provisions of section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violations of the customs laws. Upon seizure of such merchandise, the Secretary shall notify the owner of the trademark, and shall, after forfeiture, obliterate the trademark where feasible and dispose of the goods seized—

(1) by delivery to such Federal, State, and local government agencies as in the opinion of the Secretary have a need for such merchandise,

(2) by gift to such eleemosynary institutions as in the opinion of the Secretary have a need for such merchandise,

(3) more than 1 year after the date of forfeiture, by sale by appropriate customs officers at public auction under such regulations as the Secretary prescribes, except that before making any such sale the Secretary shall determine that no Federal, State, or local government agency or eleemosynary institution has established a need for such merchandise under paragraph (1) or (2), or

(4) if the merchandise is unsafe or a hazard to health, by destruction.

4. Penalties

Section 592 of Tariff Act of 1930, as amended

[19 U.S.C. 1592; P.L. 71-361, as amended by Act of Aug. 5, 1935, P.L. 95-410, and P.L. 96-417]

SEC. 592. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE.

(a) PROHIBITION.—

(1) GENERAL RULE.—Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty thereby, no person, by fraud, gross negligence, or negligence—

(A) may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of—

(i) any document, written or oral statement, or act which is material and false,

(ii) any omission which is material, or

(B) may aid or abet any other person to violate subparagraph (A).

(2) EXCEPTION.—Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct.

(b) PROCEDURES.—

(1) PRE-PENALTY NOTICE.—

(A) IN GENERAL.—If the appropriate customs officer has reasonable cause to believe that there has been a vio-lation of subsection (a) and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intention to issue a claim for a monetary penalty. Such notice shall—

(i) describe the merchandise;

(ii) set forth the details of the entry or introduction, the attempted entry or introduction, or the aiding or procuring of the entry or introduction;

(iii) specify all laws and regulations allegedly violated;

(iv) disclose all the material facts which establish the alleged violation;

(v) state whether the alleged violation occurred as a result of fraud, gross negligence, or negligence;

(vi) state the estimated loss of lawful duties, if any, and, taking into account all circumstances, the amount of the proposed monetary penalty; and

(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

(B) EXCEPTIONS.—The preceding subparagraph shall not apply if—

(i) the importation with respect to which the violation of subsection (a) occurs is noncommercial in nature, or

(ii) the amount of the penalty in the penalty claim issued under paragraph (2) is $1,000 or less.

(2) PENALTY CLAIM.—After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the appropriate customs officer shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If such officer determines that there was no violation, he shall promptly issue a written statement of the determination to the person to whom the notice was sent. If such officer determines that there was a violation, he shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vi) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 618 of this Act to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under such section 618, the appropriate customs officer shall provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(c) MAXIMUM PENALTIES—

(1) FRAUD.—A fraudulent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed the domestic value of the merchandise.

(2) GROSS NEGLIGENCE.—A grossly negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) four times the lawful duties of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 40 percent of the dutiable value of the merchandise.

(3) NEGLIGENCE.—A negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) two times the lawful duties of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 20 percent of the dutiable value of the merchandise.

(4) PRIOR DISCLOSURE.—If the person concerned discloses the circumstances of a violation of subsection (a) before, or without knowledge of, the commencement of a formal investigation of such violation, with respect to such violation, merchandise shall not be seized and any monetary penalty to be assessed under subsection (c) shall not exceed—

(A) if the violation resulted from fraud—

(i) an amount equal to 100 percent of the lawful duties of which the United States is or may be deprived, so long as such person tenders the unpaid amount of the lawful duties at the time of disclosure or within thirty days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his calculation of such unpaid amount, or

(ii) if such violation did not affect the assessment of duties, 10 percent of the dutiable value; or

(B) if such violation resulted from negligence or gross negligence, the interest (computed from the date of liquidation at the prevailing rate of interest applied under section 6621 of the Internal Revenue Code of 1954) on the amount of lawful duties of which the United states is or may be deprived so long as such person tenders the unpaid amount of the lawful duties at the time of disclosure or within 30 days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his calculation of such unpaid amount.

The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

(5) SEIZURE.—If the Secretary has reasonable cause to believe that a person has violated the provisions of subsection (a) and that such person is insolvent or beyond the jurisdiction of the United States or that seizure is otherwise essential to protect the revenue of the United States or to prevent the introduction of prohibited or restricted merchandise into the customs territory of the United States, then such merchandise may be seized and, upon assessment of a monetary penalty, forfeited unless the monetary penalty is paid within the time specified by law. Within a reasonable time after any such seizure is made, the Secretary shall issue to the person concerned a written statement containing the reasons for the seizure. After seizure of merchandise under this subsection, the Secretary may, in the case of restricted merchandise, and shall, in the case of any other merchandise (other than prohibited merchandise), return such merchandise upon the deposit of security not to exceed the maximum monetary penalty which may be assessed under subsection (c).

(d) DEPRIVATION OF LAWFUL DUTIES.—Notwithstanding section 514 of this Act, if the United States has been deprived of lawful duties as a result of a violation of subsection (a) the appropriate customs officer shall require that such lawful duties be restored, whether or not a monetary penalty is assessed.

(e) COURT OF INTERNATIONAL TRADE PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—

(1) all issues, including the amount of the penalty, shall be tried de novo;

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence;

(3) if the monetary penalty is based on gross negligence, the United States shall have the burden of proof to establish all the elements of the alleged violation; and

(4) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of proof that the act or omission did not occur as a result of negligence.

G. FOREIGN TRADE ZONES

Act of June 18, 1934, as amended

[19 U.S.C. 81a-u; Act of June 18, 1934, as amended Act of June 17, 1950, P.L. 85-791, P.L. 91-271, P.L. 96-609, P.L. 98-573, and P.L. 99-514]

SECTION 1. DEFINITIONS.

When used in this chapter—

(a) The term "Secretary" means the Secretary of Commerce;

(b) The term "Board" means the Board which is established to carry out the provisions of this chapter. The Board shall consist of the Secretary of Commerce, who shall be chairman and executive officer of the Board, the Secretary of the Treasury, and the Secretary of the Army;

(c) The term "State" includes any State, the District of Columbia, Alaska, Hawaii, and Puerto Rico;

(d) The term "corporation" means a public corporation and a private corporation, as defined in this chapter;

(e) The term "public corporation" means a State, political subdivision thereof, a municipality, a public agency of a State, political subdivision thereof, or municipality, or a corporate municipal instrumentality of one or more States;

(f) The term "private corporation" means any corporation (other than a public corporation) which is organized for the purpose of establishing, operating, and maintaining a foreign-trade zone and which is chartered under special Act enacted after June 18, 1934, of the State or States within which it is to operate such zone;

(g) The term "applicant" means a corporation applying for the right to establish, operate, and maintain a foreign-trade zone;

(h) The term "grantee" means a corporation to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted;

(i) The term "zone" means a "foreign-trade zone" as provided in this chapter.

SEC. 2. ESTABLISHMENT OF ZONES.

(a) BOARD AUTHORIZATION TO GRANT ZONES.—The Board is authorized, subject to the conditions and restrictions of this chapter and of the rules and regulations made thereunder, upon application as hereinafter provided, to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States.

(b) NUMBER OF ZONES PER PORT OF ENTRY.—Each port of entry shall be entitled to at least one zone, but when a port of entry is located within the confines of more than one State such port of entry shall be entitled to a zone in each of such States, and when two cities separated by water are embraced in one port of entry, a zone may be authorized in each of said cities or in territory adjacent thereto. Zones in addition to those to which a port of entry is entitled shall be authorized only if the Board finds that existing or authorized zones will not adequately serve the convenience of commerce.

(c) PREFERENCE TO PUBLIC CORPORATIONS.—In granting applications preference shall be given to public corporations.

(d) OWNERSHIP OF HARBOR FACILITIES BY STATE.—In case of any State in which harbor facilities of any port of entry are owned and controlled by the State and in which State harbor facilities of any other port of entry are owned and controlled by a municipality, the Board shall not grant an application by any public corporation for the establishment of any zone in such State, unless such application has been authorized by an Act of the legislature of such State (enacted after June 18, 1934).

SEC. 3. ADMISSION OF FOREIGN MERCHANDISE; TREATMENT; SHIPMENT TO CUSTOMS TERRITORY; APPRAISAL; RESHIPMENT TO ZONE.

(a) Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in this chapter, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this chapter, and be exported, destroyed, or sent into customs territory of the United States therefrom, in the original package or otherwise; but when foreign merchandise is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise: *Provided,* That whenever the privilege shall be requested and there has been no manipulation or manufacture effecting a change in tariff classification, the appropriate customs officer shall take under supervision any lot or part of a lot of foreign merchandise in a zone, cause it to be appraised and taxes determined and duties liquidated thereon. Merchandise so taken under supervision may be stored, manipulated, or manufactured under the supervision and regulations prescribed by the Secretary of the Treasury, and whether mixed or manufactured with domestic merchandise or not may, under regulations prescribed by the Secretary of the Treasury, be exported or destroyed, or may be sent into customs territory upon the payment of such liquidated duties and determined taxes thereon. If merchandise so taken under supervision has been manipulated or manufactured, such duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article. Allowance shall be made for recoverable and irrecoverable waste; and if recoverable waste is sent into customs territory, it shall be dutiable and taxable in its condition and quantity and at its weight at the time of entry. Where two or more products result from the manipulation of manufacture of merchandise in a zone the liquidated duties and determined taxes shall be distributed to the several products in accordance with their relative value at the time of separation with due allowance for waste as provided for above: *Provided further,* That subject to such regulations respecting identity and the safeguarding of the revenue as the Secretary of the Treasury may deem necessary, articles, the growth, product, or manufacture of the United States, on which all internal-revenue taxes have been paid, if subject thereto, and articles previously imported on which duty and/or tax has been paid, or which have been admitted free of duty and tax, may be taken into a zone from the customs territory of the United States, placed under the supervision of the appropriate customs officer, and whether or not they have been combined with or made part, while in such zone, of other articles, may be brought back thereto free of quotas, duty, or tax: *Provided further,* That if in the opinion of the Secretary of the Treasury their identity has been lost, such articles not entitled to free entry by reason of noncompliance with the requirements made hereunder by the Secretary of the Treasury shall be treated when they reenter customs territory of the United States as foreign merchandise under the provisions of the tariff and internal-revenue laws in force at that time: *Provided further,* That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of—

(1) the draw-back, warehousing, and bonding, or any other provisions of the Tariff Act of 1930, as amended, and the regulations thereunder; and

(2) the statutes and bonds exacted for the payment of draw-back, refund, or exemption from liability for internal-revenue taxes and for the purposes of the internal-revenue laws generally and the regulations thereunder.

Such a transfer may also be considered an exportation for the purposes of other Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable. Such articles may not be returned to customs territory for domestic consumption except where the Foreign-Trade Zones Board deems such return to be in the public interest, in which event the articles shall be subject to the provisions of paragraph 1615(f) of section 1201 of this title: *Provided further,* That no operation involving any foreign or domestic merchandise brought into a zone which operation would be subject to any provision or provisions of section 1807, chapter 15, chapter 16, chapter 17, chapter 21, chapter 23, chapter 24, chapter 25, chapter 26, or chapter 32 of the Internal Revenue Code if performed in customs territory, or involving the manufacture of any article provided for in paragraphs 367 or 368 of section 1001 of this title, shall be permitted in a zone except those operations (other than rectification of distilled spirits and wines, or the manufacture or production of alcoholic products unfit for beverage purposes) which were permissible under this chapter prior to July 1, 1949: *Provided further,* That articles produced or manufactured in a zone and exported therefrom shall on subsequent importation into the customs territory of the United States be subject to the import laws applicable to like articles manufactured in a foreign country, except that articles produced or manufactured in a zone exclusively with the use of domestic merchandise, the identity of which has been maintained in accordance with the second proviso of this section may, on such importation, be entered as American goods returned.

(b) The exemption from the customs laws of the United States provided under subsection (a) shall not be available before June 30, 1986, to bicycle component parts unless such parts are reexported from the United States, whether in the original package, as components of a completely assembled bicycle, or otherwise.

(c) Notwithstanding the provisions of the fifth proviso of subsection (a), any article (within the meaning of section 5002(a)(14) of the Internal Revenue Code of 1986) may be manufactured or produced from domestic denatured distilled spirits, and articles thereof, in a zone.

SEC. 4. CUSTOMS OFFICERS AND GUARDS.

The Secretary of the Treasury shall assign to the zone the necessary customs officers and guards to protect the revenue and to provide for the admission of foreign merchandise into customs territory.

SEC. 5. VESSELS ENTERING OR LEAVING ZONE; COASTWISE TRADE.

Vessels entering or leaving a zone shall be subject to the operation of all the laws of the United States, except as otherwise provided in this chapter, and vessels leaving a zone and arriving in customs territory of the United States shall be subject to such regulations to protect the revenue as may be prescribed by the Secretary of the Treasury. Nothing in this chapter shall be construed in any manner so as to permit vessels under foreign flags to carry goods or merchandise shipped from one foreign trade zone to another zone or port in the protected coastwise trade of the United States.

SEC. 6. APPLICATION FOR ESTABLISHMENT OF ZONE; EXPANSION OF ZONE.

(a) APPLICATION FOR ESTABLISHMENT; REQUIREMENTS.—Each application shall state in detail—

(1) The location and qualifications of the area in which it is proposed to establish a zone, showing (A) the land and water or land or water area or land area alone if the application is for its establishment in or adjacent to an interior port; (B) the means of segregation from customs territory; (C) the fitness of the area for a zone; and (D) the possibilities of expansion of the zone area;

(2) The facilities and appurtenances which it is proposed to provide and the preliminary plans and estimate of the cost thereof, and the existing facilities and appurtenances which it is proposed to utilize;

(3) The time within which the applicant proposes to commence and complete the construction of the zone and facilities and appurtenances;

(4) The methods proposed to finance the undertaking;

(5) Such other information as the Board may require.

(b) AMENDMENT OF APPLICATION; EXPANSION OF ZONE.—The Board may upon its own initiative or upon request permit the amendment of the application. Any expansion of the area of an established zone shall be made and approved in the same manner as an original application.

SEC. 7. GRANTING OF APPLICATION.

If the Board finds that the proposed plans and location are suitable for the accomplishment of the purpose of a foreign trade zone under this chapter, and that the facilities and appurtenances which it is proposed to provide are sufficient it shall make the grant.

SEC. 8. RULES AND REGULATIONS.

The Board shall prescribe such rules and regulations not inconsistent with the provisions of this chapter or the rules and regulations of the Secretary of the Treasury made hereunder and as may be necessary to carry out this chapter.

SEC. 9. COOPERATION OF BOARD WITH OTHER AGENCIES.

The Board shall cooperate with the State, subdivision, and municipality in which the zone is located in the exercise of their police, sanitary, and other powers in and in connection with the free zone. It shall also cooperate with the United States Customs Service, the United States Postal Service, the Public Health Service, the Immigration and Naturalization Service, and such other Federal agencies as have jurisdiction in ports of entry described in section 81b of this title.

SEC. 10. COOPERATION OF OTHER AGENCIES WITH BOARD.

For the purpose of facilitating the investigations of the Board and its work in the granting of the privilege, in the establishment, operation, and maintenance of a zone, the President may direct the executive departments and other establishments of the Government to cooperate with the Board, and for such purpose each of the several departments and establishments is authorized, upon direction of the President, to furnish to the Board such records, papers, and information in their possession as may be required by him, and temporarily to detail to the service of the Board such officers, experts, or engineers as may be necessary.

SEC. 11. AGREEMENTS AS TO USE OF PROPERTY.

If the title to or the right of user of any of the property to be included in a zone is in the United States, an agreement to use such property for zone purposes may be entered into between the grantee and the department or officer of the United States having control of the same, under such conditions, approved by the Board and such department or officer, as may be agreed upon.

SEC. 12. FACILITIES TO BE PROVIDED AND MAINTAINED.

Each grantee shall provide and maintain in connection with the zone—

(a) Adequate slips, docks, wharves, warehouses, loading and unloading and mooring facilities where the zone is adjacent to water; or, in the case of an inland zone, adequate loading, unloading, and warehouse facilities;

(b) Adequate transportation connections with the surrounding territory and with all parts of the United States, so arranged as to permit of proper guarding and inspection for the protection of the revenue;

(c) Adequate facilities for coal or other fuel and for light and power;

(d) Adequate water and sewer mains;

(e) Adequate quarters and facilities for the officers and employees of the United States, State, and municipality whose duties may require their presence within the zone;

(f) Adequate enclosures to segregate the zone from customs territory for protection of the revenue, together with suitable provisions for ingress and egress of persons, conveyances, vessels, and merchandise;

(g) Such other facilities as may be required by the Board.

SEC. 13. PERMISSION TO OTHERS TO USE ZONE.

The grantee may, with the approval of the Board, and under reasonable and uniform regulations for like conditions and circumstances to be prescribed by it, permit other persons, firms, corporations, or associations to erect such buildings and other structures within the zone as will meet their particular requirements: *Provided,* That such permission shall not constitute a vested right as against the United States, nor interfere with the regulation of the grantee or the permittee by the United States, nor interfere with or complicate the revocation of the grant by the United States: *And provided further,* That in the event of the United States or the grantee desiring to acquire the property of the permittee no good will shall be considered as accruing from the privilege granted to the zone: *And provided further,* That such permits shall not be granted on terms that conflict with the public use of the zone as set forth in this chapter.

SEC. 14. OPERATION OF ZONE AS PUBLIC UTILITY; COST OF CUSTOMS SERVICE.

Each zone shall be operated as a public utility, and all rates and charges for all services or privileges within the zone shall be fair and reasonable, and the grantee shall afford to all who may apply for the use of the zone and its facilities and appurtenances uniform treatment under like conditions, subject to such treaties or commercial conventions as are now in force or may hereafter be made from time to time by the United States with foreign governments and the cost of maintaining the additional customs service required under this chapter shall be paid by the operator of the zone.

SEC. 15. RESIDENTS OF ZONE.

(a) **Persons Allowed To Reside in Zone.**—No person shall be allowed to reside within the zone except Federal, State, or municipal officers or agents whose resident presence is deemed necessary to the Board.

(b) **Rules and Regulations for Employees Entering and Leaving Zone.**—The Board shall prescribe rules and regulations regarding employees and other persons entering and leaving the zone. All rules and regulations concerning the protection of the revenue shall be approved by the Secretary of the Treasury.

(c) **Exclusion From Zone of Goods or Process of Treatment.**—The Board may at any time order the exclusion from the zone of any goods or process of treatment that in its judgment is detrimental to the public interest, health, or safety.

(d) RETAIL TRADE WITHIN ZONE.—No retail trade shall be conducted within the zone except under permits issued by the grantee and approved by the Board. Such permittees shall sell no goods except such domestic or duty-paid or duty-free goods as are brought into the zone from customs territory.

(e) Tangible personal property imported from outside the United States and held in a zone for the purpose of storage, sale, exhibition, repackaging, assembly, distribution, sorting, grading, cleaning, mixing, display, manufacturing, or processing, and tangible personal property produced in the United States and held in a zone for exportation, either in its original form or as altered by any of the above processes, shall be exempt from State and local ad valorem taxation.

SEC. 16. ACCOUNTS AND RECORDKEEPING.

(a) MANNER OF KEEPING ACCOUNTS.—The form and manner of keeping the accounts of each zone shall be prescribed by the Board.

(b) ANNUAL REPORT BY GRANTEE.—Each grantee shall make to the Board annually, and at such other times as it may prescribe, reports containing a full statement of all the operations, receipts, and expenditures, and such other information as the Board may require.

(c) REPORT TO CONGRESS.—The Board shall make a report to Congress by April 1 of each year containing a summary of the operation and fiscal condition of each zone and transmit therewith copies of the annual report of each grantee.

SEC. 17. TRANSFER OF GRANT.

The grant shall not be sold, conveyed, transferred, set over, or assigned.

SEC. 18. REVOCATION OF GRANTS.

(a) PROCEDURE FOR REVOCATION.—In the event of repeated willful violations of any of the provisions of this chapter by the grantee, the Board may revoke the grant after four months' notice to the grantee and affording it an opportunity to be heard. The testimony taken before the Board shall be reduced to writing and filed in the records of the Board together with the decision reached thereon.

(b) ATTENDANCE OF WITNESSES AND PRODUCTION OF EVIDENCE.—In the conduct of any proceeding under this section for the revocation of a grant the Board may compel the attendance of witnesses and the giving of testimony and the production of documentary evidence, and for such purpose may invoke the aid of the district courts of the United States.

(c) NATURE OF ORDER OF REVOCATION; APPEAL.—An order under the provisions of this section revoking the grant issued by the Board shall be final and conclusive, unless within ninety days after its service the grantee appeals to the court of appeals for the circuit in which the zone is located by filing with the clerk of said court a written petition praying that the order of the Board be set aside. Such order shall be stayed pending the disposition of appellate proceedings by the court. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Board and it shall thereupon file in the court the record in the proceedings held before it under this section, as provided in section 2112 of title 28. The testimony and evidence taken or submitted before the Board, duly certified and filed as a part of the record, shall be considered by the court as the evidence in the case.

SEC. 19. OFFENSES.

In case of a violation of this chapter, or any regulation under this chapter, by the grantee, any officer, agent or employee thereof responsible for or permitting any such violation shall be subject to a fine of not more than $1,000. Each day during which a violation continues shall constitute a separate offense.

SEC. 20. SEPARABILITY OF PROVISIONS.

If any provision of this chapter or the application of such provision to certain circumstances be held invalid, the remainder of this chapter and the application of such provisions to circumstances other than those as to which it is held invalid shall not be affected thereby.

SEC. 21. RIGHT TO ALTER, AMEND, OR REPEAL CHAPTER.

The right to alter, amend, or repeal this chapter is reserved.

H. AUTOMOTIVE PRODUCTS TRADE ACT OF 1965

[19 U.S.C. 2001; P.L. 89-283]

TITLE I—SHORT TITLE AND PURPOSES

SHORT TITLE

SECTION 101. This Act may be cited as the "Automotive Products Trade Act of 1965."

PURPOSES

SEC. 102. The purposes of this Act are—

(1) to provide for the implementation of the Agreement Concerning Automotive Products Between the Government of the United States of America and the Government of Canada signed on January 16, 1965 (hereinafter referred to as the "Agreement"), in order to strengthen the economic relations and expand trade in automotive products between the United States and Canada; and

(2) to authorize the implementation of such other international agreements providing for the mutual reduction or elimination of duties applicable to automotive products as the Government of the United States may hereafter enter into.

TITLE II—BASIC AUTHORITIES

IMPLEMENTATION OF THE AGREEMENT

SEC. 201. (a) The President is authorized to proclaim the modifications of the Tariff Schedules of the United States provided for in title IV of his Act.

(b) At any time after the issuance of the proclamation authorized by subsection (a), the President is authorized to proclaim further modifications of the Tariff Schedules of the United States to provide for the duty-free treatment of any Canadian article which is original motor-vehicle equipment (as defined by such Schedules as modified pursuant to subsection (a)) if he determines that the importation of such article, is actually or potentially of commercial significance and that such duty-free treatment is required to carry out the Agreement.

IMPLEMENTATION OF OTHER AGREEMENTS

SEC. 202. (a) Whenever, after determining that such an agreement will afford mutual trade benefits, the President enters into an agreement with the government of a country providing for the mutual elimination of the duties applicable to products of their respective countries which are motor vehicles and fabricated components intended for use as original equipment in the manufacture of such vehicles, the President (in accordance with subsection (d)) is authorized to proclaim such modifications of the Tariff Schedules of the United States as he determines to be required to carry out such agreement.

(b) Whenever, after having entered into an agreement with the government of a country providing for the mutual elimination of the duties applicable to products described in subsection (a), the President, after determining that such further agreement will afford mutual trade benefits, enters into a further agreement with such government providing for the mutual reduction or elimination of the duties applicable to automotive products other than motor vehicles and fabricated components intended for use as original equipment in the manufacture of such vehicles, the President (in accordance with subsection (d)) is authorized to proclaim such modifications of the Tariff Schedules of the United States as he determines to be required to carry out such further agreement.

(c) Before the President enters into the negotiation of an agreement referred to in subsection (a) or (b), he shall—

(1) seek the advice of the Tariff Commission as to the probable economic effect of the reduction or elimination of duties on industries producing articles like of directly competitive with those which may be covered by such agreement;

(2) give reasonable public notice of his intention to negotiate such agreement (which notice shall be published in the Federal Register) in order that any interested person may have an opportunity to present his views to such agency as the President shall designate, under such rules and regulations as the President may prescribe; and

(3) seek information and advice with respect to such agreement from the Departments of Commerce, Labor, State, and the Treasury, and from such other sources as he may deem appropriate.

(d)(1) The President shall transmit to each House of the Congress a copy of each agreement referred to in subsection (a) or (b). The delivery to both Houses shall be on the same day and shall be made to each House while it is in session.

(2) The President is authorized to issue any proclamation to carry out any such agreement—

(A) only after the expiration of the 60-day period following the date of delivery,

(B) only if, between the date of delivery and the expiration of such 60-day period, the Congress has not adopted a concurrent resolution stating in substance that the Senate and House of Representatives disapprove of the agreement, and

(C) in the case of any agreement referred to in subsection (b) with any country only if there is in effect a proclamation implementing an agreement with such country applicable to products described in subsection (a).

(3) For purposes of paragraph (2) in the computation of the 60-day period there shall be excluded the days on which either House is not in session because of adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die.

(e) This section shall cause to be in effect on the day after the date of the enactment of this Act.

EFFECTIVE DATE OF PROCLAMATIONS

SEC. 203. (a) Subject to subsection (b), the President is authorized, notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C., sec. 1514) or any other provision of law, to give retroactive effect to any proclamation issued pursuant to section 201 of this Act as of the earliest date after January 17, 1965, which he determines to be practicable.

(b) In the case of liquidated customs entries, the retroactive effect pursuant to subsection (a) of any proclamation shall apply only upon request therefor filed with the customs officer concerned on or before the 90th day after the date of such proclamation and subject to such other conditions as the President may specify.

TERMINATION OF PROCLAMATIONS

SEC. 204. The President is authorized at any time to terminate, in whole or in part, any proclamation issued pursuant to section 201 or 202 of this Act.

SPECIAL REPORTS TO CONGRESS

SEC. 205. (a) No later than August 31, 1968, the President shall submit to the Senate and the House of Representatives a special report on the comprehensive review called for by Article IV(c) of the Agreement. In such report he shall advise the Congress of the progress made toward the achievement of the objectives of Article I of the Agreement.

(b) Whenever the President finds that any manufacturer has entered into any undertaking, by reason of governmental action, to increase the Canadian value added of automobiles, buses, specified commercial vehicles, or original equipment parts produced by such manufacturer in Canada after August 31, 1968, he shall report such finding to the Senate and the House of Representatives. The President shall also report whether such undertaking is additional to undertakings agreed to in letters of undertaking submitted by such manufacturer before the date of enactment of this Act.

(c) The reports provided for in subsections (a) and (b) of this section shall include recommendations for such further steps, including legislative action, if any, as may be necessary for the achievement of the purposes of the Agreement and this Act.

TITLE III—TARIFF ADJUSTMENT AND OTHER ADJUSTMENT ASSISTANCE

GENERAL AUTHORITY

SEC. 301. Subject to section 302 of this Act, a petition may be filed for tariff adjustment or for a determination of eligibility to apply for adjustment assistance under title III of the Trade Expansion Act of 1962 (19 U.S.C., sec. 1901-1991) as though the reduction or elimination of a duty proclaimed by the President pursuant to section 201 or 202 of this Act were a concession granted under a trade agreement referred to in section 301 of the Trade Expansion Act of 1962.

SPECIAL AUTHORITY DURING TRANSITIONAL PERIOD UNDER THE AGREEMENT

SEC. 302. (a) After the 90th day after the date of the enactment of this Act and before July 1, 1968, a petition under section 301 of this Act for a determination of eligibility to apply for adjustment assistance may be filed with the President by—

(1) a firm which produces an automotive product, or its representative; or

(2) a group of workers in a firm which produces an automotive product, or their certified or recognized union or other duly authorized representative.

(b) After a petition is filed by a firm or group of workers under subsection (a), the President shall determine whether—

(1) dislocation of the firm or group of workers has occurred or threatens to occur;

(2) production in the United States of the automotive product concerned produced by the firm, or an appropriate subdivision thereof, and of the automotive product like or directly competitive therewith, has decreased appreciably; and

(3)(A) imports into the United States from Canada of the Canadian automotive product like or directly competitive with that produced by the firm, or an appropriate subdivision thereof, have increased appreciably; or

(B) exports from the United States to Canada of the United States automotive product concerned produced by the firm, or an appropriate subdivision thereof, and of the United States automotive product like or directly competitive therewith, have decreased appreciably, and the decrease in such exports is greater than the decrease, if any, in production in Canada of the Canadian automotive product like or directly competitive with the United States automotive product being exported.

(c) If the President makes an affirmative determination under paragraphs (1), (2), and (3) of subsection (b), with respect to a firm or group of workers, he shall promptly certify that as a result of its dislocation the firm or group of workers is eligible to apply for adjustment assistance, unless the President determines that the operation of the Agreement has not been the primary factor in causing or threatening to cause dislocation of the firm or group of workers.

(d) If the President makes an affirmative determination under paragraph (1) but a negative determination under paragraph (2) or (3) of subsection (b), with respect to a firm or group of workers, the President shall determine whether the operation of the Agreement has nevertheless been the primary factor in causing or threatening to cause dislocation of the firm or group of workers. If the President makes such an affirmative determination, he shall promptly certify that as a result of its dislocation the firm or group of workers is eligible to apply for adjustment assistance.

(e)(1) In order to provide the President with a factual record on the basis of which he may make the determinations referred to in subsections (b), (c), and (d) with respect to a firm or a group of workers, the President shall promptly transmit to the Tariff Commission a copy of each petition filed under such subsection (a) and, not later than 5 days after the date on which the petition is filed, shall request the Tariff Commission to conduct an investigation related to questions of fact relevant to such determinations and to make a report of the facts disclosed by such investigation. In his request, the President may specify the particular kinds of data which he deems appropriate. Upon receipt of the President's request, the Tariff Commission shall promptly institute the investigation and public notice thereof in the Federal Register.

(2) In the course of each investigation conducted under paragraph (1), the Tariff Commission shall, after reasonable notice, hold a public hearing, if such hearing is requested (not later than 10 days after the date of the publication of its notice under paragraph (1)) by the petitioner or any other person showing a proper interest in the subject matter of the investigation, and shall afford interested persons an opportunity to be present, to produce evidence, and to be heard at such hearing.

(3) Not later than 50 days after the date on which it receives the request of the President under paragraph (1), the Tariff Commission shall transmit to the President a report of the facts disclosed by its investigation, together with the transcript of the hearing and any briefs which may have been submitted in connection with such investigation.

(f)(1) The President shall make each final determination under subsection (b) (c), or (d) with respect to a firm or group of workers only after he has sought advice from the Departments of Commerce, Labor, and the Treasury, the Small Business Administration, and such other agencies as he may deem appropriate.

(2) The President shall make each such final determination not later than 15 days after the date on which he receives the Tariff Commission's report, unless, within such period, the President requests additional factual information from the Tariff Commission. In this event, the Tariff Commission shall, not later than 25 days after the date on which it receives the President's request, furnish such additional factual information in a supplemental report, and the President shall make his final determination not later than 10 days after the date on which he receives such supplemental report.

(3) The President shall promptly publish in the Federal Register a summary of each final determination under this section.

(g) Any certification with respect to a group of workers made by the President under this section shall—

(1) specify the date on which the dislocation began or threatens to begin; and

(2) be terminated by the President whenever he determines that the operation of the Agreement is no longer the primary factor in causing separations from the firm or subdivision thereof, in which case such termination shall apply only with respect to separations occurring after the termination date specified by the President.

(h) Any certification with respect to a firm or a group of workers or any termination of such certification, including the specification of a date in such certification or termination, made by the President under this section shall constitute a certification or termination, including the specification of a date therein, under section 302 of the Trade Expansion Act of 1962 (19 U.S.C., sec. 1902) for purposes of chapter 2 or of title III of that Act.

(i) If a firm which has been certified under this section applies for tax assistance as provided by section 317 of the Trade Expansion Act of 1962, the reference in subsection (a)(2) of such section 317 to a trade or business which was seriously injured by increased imports which the Tariff Commission has determined to result from concessions granted under trade agreements shall be treated as referring to a trade or business which was seriously injured by the operation of the Agreement.

(j) Notwithstanding any provision of chapter 3 of title III of the Trade Expansion Act of 1962 or of this title, applications based on any certification made by the President under this section for—

(1) trade readjustment allowances for weeks of unemployment beginning after January 17, 1965, and before the 90th day after the date of the enactment of this Act, and

(2) relocation allowances for relocations occurring after January 17, 1965, and before such 90th day,

shall be determined in accordance with regulations prescribed by the Secretary of Labor.

(k) The President is authorized to exercise any of his functions under this section through such agency or other instrumentality of the United States Government as he may direct and in conformity with such rules or regulations as he may prescribe.

(l) For purposes of this section—

(1) The term "automotive product" means a motor vehicle or a fabricated component to be used as original equipment in the manufacture of motor vehicles.

(2) The term "dislocation" means—

(A) in the case of a firm, injury to the firm, which may be evidenced by such conditions as idling of productive facilities, inability to operate at a level of reasonable profit, or unemployment or underemployment, and which is of a serious nature; and

(B) in the case of a group of workers, unemployment or underemployment of a significant number or proportion of the workers of a firm or an appropriate subdivision thereof.

(3) The term "firm" includes an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustees in bankruptcy, and receivers under decree of any court. A firm, together with any predecessor, successor, or affiliated firm controlled or substantially beneficially owned by substantially the same persons, may be considered a single firm where necessary to prevent unjustifiable benefits.

(4) The term "operation of the Agreement" includes governmental or private actions in the United States or Canada directly related to the conclusion or implementation of the Agreement.

ADJUSTMENT ASSISTANCE RELATED TO OTHER AGREEMENTS

SEC. 303. At the time the President transmits to the Congress a copy of any agreement pursuant to section 202(d)(1), he shall recommend to the Congress such legislative provisions concerning adjustment assistance to firms and workers as he determines to be appropriate in light of the anticipated economic impact of the reduction or elimination of duties provided for by such agreement.

AUTHORIZATION OF APPROPRIATIONS

SEC. 304. There are hereby authorized to be appropriated such sums as may be necessary from time to time to carry out the provisions of this title, which sums are authorized to be appropriated to remain available until expended.

TITLE IV—MODIFICATIONS OF TARIFF SCHEDULES OF THE UNITED STATES

ENTRY INTO FORCE AND STATUS OF MODIFICATIONS

SEC. 401. (a) The modifications of the Tariff Schedules of the United States provided for in this title shall not enter into force except as proclaimed by the President pursuant to section 201(a) of this Act.

(b) The rates of duty in column numbered 1 of the Tariff Schedules of the United States which are modified pursuant to section 201(a) of this Act shall be treated—

(1) as not having the status of statutory provisions enacted by the Congress, but

(2) as having been proclaimed by the President as being required to carry out a foreign trade agreement to which the United States is a party.

REFERENCES TO TARIFF SCHEDULES

SEC. 402. Whenever in this title a modification is expressed in terms of a modification of an item or other provision, the reference shall be considered to be made to an item or other provision of the Tariff Schedules of the United States (19 U.S.C., sec. 1202). Each page reference "(p.)" in this title refers to the page on which the item or provision referred to appears both in part II of the Federal Register for August 7, 1963, and in volume 77A of the United States Statutes at Large.

DEFINITION OF CANADIAN ARTICLE

SEC. 403. In general headnote 3 (pp. 11 and 12) redesignate paragraphs (d), (e), and (f) as paragraphs (e), (f), and (g), respectively, and insert a new paragraph (d) as follows:

[Text of general headnote 3(c).]

DEFINITION OF ORIGINAL MOTOR-VEHICLE EQUIPMENT

SEC. 404. In the headnotes for subpart B, part 6, schedule 6, add after headnote 1 (p. 325) the following new headnote:

[Text of headnote 2, part 6B, schedule 6.]

IDENTIFICATION OF AUTOMOTIVE PRODUCTS

SEC. 405. (a) Redesignate item 692.25 (p. 326) as 692.27; in headnote 1(b) of subpart B, part 6, schedule 6 (p. 325) substitute "item 692.27" in lieu of "item 692.25"; and insert in proper numerical sequence new items as follows:

"692.06	If Canadian article, but not including any electric trolley bus, three-wheeled vehicle, or trailer accompanying an automobile truck tractor (see general headnote 3(d))	Free
692.11	If Canadian article, but not including any three-wheeled vehicle (see general headnote 3(d))	Free
692.21	Chassis, if Canadian article, except chasis for an electric trolley bus, or a three-wheeled vehicle; bodies (including cabs), if Canadian article and original motor-vehicle equipment (see headnote 2 of this subpart)	Free
692.23	Chassis, if Canadian article, except chassis designed primarily for a vehicle described in item 692.15 or a three-wheeled vehicle; bodies (including cabs), if Canadian article and original motor-vehicle equipment (see headnote 2 of this subpart)	Free
692.25	If Canadian article and original motor-vehicle equipment (see headnote 2 of this subpart)	Free
692.28	Automobile truck tractors, if Canadian article; other articles, if Canadian article and original motor-vehicle equipment (see headnote 2 of this subpart)	Free"

(b) Insert in proper numerical sequence new items as follows:

"361.90	Any article described in the foregoing items 360.20 to 360.70, inclusive, 360.80, 361.80, or 361.85, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6)	Free
516.98	Any article described in the foregoing items 516.71 to 516.76, inclusive, or 516.94, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6)	Free
646.79	Any article described in the foregoing item 646.20 and items 646.40 to 646.78, inclusive (except 646.45 and 646.47), if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B schedule 6)	Free
652.39	Any article described in the foregoing items 652.12 to 652.38, inclusive, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6)	Free
658.10	Any article described in the foregoing items 657.09 to 658.00, inclusive, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6)	Free
682.65	Any article described in the foregoing items 682.10 to 682.60, inclusive (except 682.50), if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6)	Free
685.55	Any article described in the foregoing items 685.20 to 685.50, inclusive, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B schedule 6)	Free
721.20	Any article in the foregoing items covering clocks, clock movements, clock cases and dials and parts thereof, plates (720.67), assemblies and subassemblies for clock movements, and other parts for clock movements, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6)	Free"

(c) Insert in proper numerical sequence new items 355.27, 389.80, 728.30, 745.80, and 774.70, each having an article description and rate as follows:

"Any article described in the foregoing provisions of this subpart, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) .... Free"

(d) Redesignate item 613.16 as 613.18, item 652.85 as 652.84, item 652.87 as 652.88, item 680.34 as 680.33, item 680.58 as 680.60, item

680.59 as 680.70, item 680.60 as 680.90, and item 711.91 as 711.93; and insert in proper numerical sequence new items as follows:

207.01
220.46
357.91
357.96
358.03
517.82
535.15
540.72
544.18
544.32
544.42
544.52
544.55
545.62
545.64
547.16
610.81
613.16
613.19
618.48
620.47
642.21
642.86
642.88
646.93
647.02
647.06
652.10
652.76
652.85
652.87
652.89
660.43
660.45
660.47
660.51
660.53
660.55
660.86
660.93
660.95
661.11
661.13
661.16
661.21
661.36
661.93
661.96
662.36
662.51
664.51
678.51
680.21
680.23
680.28
680.31
680.34
680.36
680.58
680.91
682.71
692.91
683.11
683.16
683.61
683.66
684.41
684.63
684.71
685.71
685.81
685.91
686.11
686.23
686.61
686.81
687.51
687.61
688.13
688.41
711.85
711.91
711.99
712.51
727.07
772.66
772.81
772.86
773.26
773.31
791.81
791.91

each such item having the article description "If Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) * * *" subordinate to the immediately preceding article description, and having "Free" in rate of duty column numbered 1.

TITLE V—GENERAL PROVISIONS

AUTHORITIES

Sec. 501. The head of any agency performing functions authorized by this Act may—

(1) authorize the head of any other agency to perform any of such functions; and

(2) prescribe such rules and regulations as may be necessary to perform such functions.

ANNUAL REPORT

Sec. 502. The President shall submit to the Congress an annual report on the implementation of this Act. Such report shall include information regarding new negotiations, reductions or eliminations of duties, reciprocal concessions obtained, and other information relating to activities under this Act. Such report shall also include information providing an evaluation of the Agreement and this Act in relation to the total national interest, and specifically shall include, to the extent practicable, information with respect to—

(1) the production of motor vehicles and motor vehicle parts in the United States and Canada.

(2) the retail prices of motor vehicles and motor vehicles parts in the United States and Canada,

(3) employment in the motor vehicle industry and motor vehicle parts industry in the United States and Canada, and

(4) United States and Canadian trade in motor vehicles and motor vehicle parts, particularly trade between the United States and Canada.

APPLICABILITY OF ANTIDUMPING AND ANTITRUST LAWS

SEC. 503. Nothing contained in this Act shall be construed to affect or modify the provisions of subtitle B of title VII of the Tariff Act of 1930, or of any of the antitrust laws as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12).

TITLE VI—MISCELLANEOUS PROVISIONS

JOINT COMMITTEE ON REDUCTION OF NONESSENTIAL FEDERAL EXPENDITURES

SEC. 601. Section 601(e) of the Revenue Act of 1941 (55 Stat. 726) (relating to the Joint Committee on Reduction of Nonessential Federal Expenditures) is amended to read as follows:

"(e) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section."

I. IMPLEMENTATION OF THE GATT AGREEMENT ON TRADE IN CIVIL AIRCRAFT

Title VI of Trade Agreements Act of 1979

[19 U.S.C. 1202, 19 U.S.C. 2135; P.L. 96-39]

SEC. 601. CIVIL AIRCRAFT AND PARTS.

(a) GENERAL.—When the conditions under section 2(b) of this Act on acceptance of the Agreement on Trade in Civil Aircraft are fulfilled, the President may proclaim after September 30, 1979, the changes provided for under the following amendments:

(1) The headnotes to schedule 6, part 6, subpart C of the Tariff Schedules of the United States are amended by inserting the following new headnote:

[Text of headnote 3, part 6C, Schedule 6.]

(2) A duty rate of "Free" in rate column numbered 1 of the Tariff Schedules of the United States for those articles classified in the following items which the President determines would provide coverage comparable to that provided by foreign countries in the Annex to the Agreement on Trade in Civil Aircraft if such articles are certified for use in civil aircraft in accordance with headnote 3 to schedule 6, part 6, subpart C of the Tariff Schedules of the United States:

518.51
544.41
642.20
647.03
647.05
652.09
653.39
653.94
660.44
660.46
660.52
660.54
660.85
660.97
661.10
661.12
661.15
661.20
661.35
661.90
661.95
662.50
664.10
676.15
676.30
678.50
680.47
680.50
680.55
680.56
682.07
682.40
682.60
683.60
684.30
684.40
684.50
684.70
685.24
685.29
685.40
685.60
685.70
686.22
686.24
686.60
688.12
688.40
694.15
694.20
694.40
694.60
709.45
710.08
710.14
710.16
710.30
710.46
711.36
711.37
711.82
711.84
711.98
712.05
712.47
712.49
715.15
720.08
727.47
727.48
727.55
745.45
772.45
772.65.

(3) Section 466 of the Tariff Act of 1930 (19 U.S.C. 1466) is amended by adding at the end thereof the following new subsection:

"(f) The duty imposed under subsection (a) shall not apply to the cost of repair parts, materials, or expenses of repairs in a foreign country upon a United States civil aircraft, within the meaning of headnote 3 to Schedule 6, part 6, subpart C of the Tariff Schedules of the United States.".

(b) TERMINATION AND WITHDRAWAL.—For purposes of section 125 of the Trade Act of 1974, the amendments made under subsection (a), if any, shall be considered to be trade agreement obligations entered into under the Trade Act of 1974 of benefit to foreign countries or instrumentalities.

Section 234 of Trade and Tariff Act of 1984

[19 U.S.C. 1202, 19 U.S.C. 2135; P.L. 98-573]

SEC. 234. MODIFICATION OF DUTIES ON CERTAIN ARTICLES USED IN CIVIL AVIATION.

(a) The President may proclaim modifications in the rate of duty column numbered 1 and in the article descriptions, including the superior headings thereto, for the articles provided for in the following items in the Tariff Schedules of the United States (19 U.S.C. 1202) in order to provide duty-free coverage comparable to the expanded coverage provided by all other signatories to the Agreement on Trade and Civil Aircraft pursuant to the extension of the Annex to the Agreement on Trade in Civil Aircraft on October 6, 1983, and recorded in the decision of the Committee on March 22, 1984, if such articles are certified for use in civil aircraft in accordance with headnote 3 to schedule 6, part 6, subpart C of such Schedules:

646.95
660.85
660.97
661.06
661.10
661.15
661.20
661.35
680.59
680.61
680.62
680.92
680.95
681.01
681.15
681.18
681.21
681.24
682.05
683.05
683.07
683.15
708.01
708.03
708.05
708.07
708.09
708.21
708.23
708.25
708.27
708.29
711.77
711.78
711.98
711.49

(b) For purposes of section 125 of the Trade Act of 1974, the duty-free treatment, if any, proclaimed under subsection (a) shall be considered to be trade agreement obligations entered into under the Trade Act of 1974 of benefit to foreign countries or instrumentalities.

Chapter 9: TRADE REMEDY LAWS

A. UNFAIR TRADE LAWS

1. Antidumping Law

Title VII, Subtitle B of Tariff Act of 1930, as amended

[19 U.S.C. 1673; P.L. 71-361, as amended by P.L. 96-39, P.L. 98-573, and P.L. 99-514]

Subtitle B—Imposition of Antidumping Duties

SEC. 731. ANTIDUMPING DUTIES IMPOSED.

If—

(1) the administering authority determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation, then there shall be imposed upon such merchandise an antidumping duty, in addition to any other duty imposed, in an amount equal to the amount by which the foreign market value exceeds the United States price for the merchandise. For purposes of this section and section 735(b)(1), a reference to the sale of foreign merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

SEC. 732. PROCEDURES FOR INITIATING AN ANTIDUMPING DUTY INVESTIGATION.

(a) INITIATION BY ADMINISTERING AUTHORITY.—

(1) IN GENERAL.—An antidumping duty investigation shall be commenced whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 731 exist.

(2) CASES INVOLVING PERSISTENT DUMPING.—

(A) MONITORING.—The administering authority may establish a monitoring program with respect to imports of a class or kind of merchandise from any additional supplier country for a period not to exceed one year if—

(i) more than one antidumping order is in effect with respect to that class or kind of merchandise;

(ii) in the judgment of the administering authority there is reason to believe or suspect an extraordinary pattern of persistent injurious dumping from one or more additional supplier countries; and

(iii) in the judgment of the administering authority this extraordinary pattern is causing a serious commercial problem for the domestic industry.

(B) If during the period of monitoring referred to in subparagraph (A), the administering authority determines that there is sufficient information to commence a formal investigation under this subsection regarding an additional supplier country, the administering authority shall immediately commence such an investigation.

(C) DEFINITION.—For purposes of this paragraph, the term "additional supplier country" means a country regarding which no antidumping investigation is currently pending, and no antidumping duty order is currently in effect, with respect to imports of the class or kind of merchandise covered by subparagraph (A).

(D) EXPEDITIOUS ACTION.—The administering authority and the Commission, to the extent practicable, shall expedite proceedings under this subtitle undertaken as a result of a formal investigation commenced under subparagraph (B).

(b) INITIATION BY PETITIONS—

(1) PETITION REQUIREMENTS.—An antidumping proceeding shall be commenced whenever an interested party described in subparagraph (C), (D), (E), or (F) of section 771(9) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 731, and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) SIMULTANEOUS FILING WITH COMMISSION.—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(c) PETITION DETERMINATION.—Within 20 days after the date on which a petition is filed under subsection (b), the administering authority shall—

(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 731 and contains information reasonably available to the petitioner supporting the allegations,

(2) if the determination is affirmative, commence an investigation to determine whether the class or kind of merchandise described in the petition is being, or is likely to be, sold in the United States at less than its fair value, and provide for the publication of notice of the determination in the Federal Register, and

(3) if the determination is negative, dismiss the petition, terminate the proceeding, notify the petitioner in writing of the

reasons for the determination, and provide for the publication of notice of the determination in the Federal Register.

(d) NOTIFICATION TO COMMISSION OF DETERMINATION.—The administering authority shall—

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c), and

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

SEC. 733. PRELIMINARY DETERMINATIONS.

(a) DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.—Except in the case of a petition dismissed by the administering authority under section 732(c)(3), the Commission, within 45 days after the date on which a petition is filed under section 732(b) or on which it receives notice from the administering authority of an investigation commenced under section 732(a), shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable indication that—

(1) an industry in the United States—

(A) is materially injured, or

(B) is threatened with material injury, or

(2) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise which is the subject of the investigation by the administering authority. If that determination is negative, the investigation shall be terminated.

(b) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—

(1) PERIOD OF ANTIDUMPING DUTY INVESTIGATION.—Within 160 days after the date on which a petition is filed under section 732(b), or an investigation is commenced under section 732(a), but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold at less than fair value. If the determination of the administering authority under this subsection is affirmative, the determination shall include the estimated average amount by which the foreign market value exceeds the United States price.

(2) PRELIMINARY DETERMINATION UNDER WAIVER OF VERIFICATION.—Within 75 days after the initiation of an investigation, the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 60 days of the investigation, and, if there appears to be sufficient information available upon

which the preliminary determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available non-confidential information and all other information which is disclosed pursuant to section 777. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), or (F) of section 771(9) to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a preliminary determination made on the basis of the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), or (F) of section 771(9) to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminary determination shall be made within 90 days after the commencement of the investigation on the basis of the record established during the first 60 days after the investigation was commenced.

(c) Extension of Period in Extraordinarily Complicated Cases.—

(1) In general.—If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b)(1), or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the transactions to be investigated or adjustments to be considered,

(II) the novelty of the issues presented, or

(III) the number of firms whose activities must be investigated, and

(ii) additional time is necessary to make the preliminary determination,

then the administering authority may postpone making the preliminary determination under subsection (b)(1) until not later than the 210th day after the date on which a petition is filed under section 732(b), or an investigation is commenced under section 732(a).

(2) Notice of postponement.—The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b)(1), if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement, and notice of the postponement shall be published in the Federal Register.

(d) Effect of Determination by the Administering Authority.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority—

(1) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register,

(2) shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise concerned equal to the estimated average amount by which the foreign market value exceeds the United States price, and

(3) shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) Critical Circumstances Determinations.—

(1) In general.—If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly determine, on the basis of the best information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

(2) Suspension of liquidation.—If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(1) shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.

(f) Notice of Determinations.—Whenever the Commission or the administering authority makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

SEC. 734. TERMINATION OR SUSPENSION OF INVESTIGATION.

(a) Termination of Investigation Upon Withdrawal of Petition.—

(1) In general.—Except as provided in paragraphs (2) and (3), an investigation under this subtitle may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 732(a).

(2) Special rules for quantitative restriction agreements.—

(A) In general.—Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting an understanding or other kind of agreement to limit the volume of imports into the United States of the merchandise that is subject to the investigation unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

(B) Public interest factors.—In making a decision under subparagraph (A) regarding the public interest the administering authority shall take into account—

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of antidumping duties;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) Prior consultations.—Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall, to the extent practicable, consult with—

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) Limitation on termination by commission.—The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 733(b).

(b) Agreements To Eliminate Completely Sales at Less Than Fair Value or To Cease Exports of Merchandise.—The administering authority may suspend an investigation if the exporters of the merchandise which is the subject of the investigation who account for substantially all of the imports of that merchandise agree—

(1) to cease exports of the merchandise to the United States within 6 months after the date on which the investigation is suspended, or

(2) to revise their prices to eliminate completely any amount by which the foreign market value of the merchandise which is the subject of the agreement exceeds the United States price of that merchandise.

(c) Agreements Eliminating Injurious Effect.—

(1) General rule.—If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement to revise prices from exporters of the merchandise which is the subject of the investigation who account for substantially all of the imports of that merchandise into the United States, if the agreement will eliminate completely the injurious effect of exports to the United States of that merchandise and if—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) for each entry of each exporter the amount by which the estimated foreign market value exceeds the United States price will not exceed 15 percent of the weighted average amount by which the estimated foreign market value exceeded the United States price for all less-than-fair-value entries of the exporter examined during the course of the investigation,

(2) Definition of extraordinary circumstances.—

(A) Extraordinary circumstances.—For purposes of this subsection, the term "extraordinary circumstances" means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

(B) Complex.—For purposes of this paragraph, the term "complex" means—

(i) there are a large number of transactions to be investigated for adjustments to be considered,

(ii) the issues raised are novel, or

(iii) the number of firms involved is large.

(d) Additional Rules and Conditions.—The Administering authority may not accept an agreement under subsection (b) or (c) unless—

(1) it is satisfied that suspension of the investigation is in the public interest, and

(2) effective monitoring of the agreement by the United States is practicable.

(e) Suspension of Investigation Procedure.—Before an investigation may be suspended under subsection (b) or (c) the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission

not less than 30 days before the date on which it suspends the investigation,

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced, and of how the agreement will meet the requirements of subsections (b) and (d), or (c) and (d), and

(3) permit all interested parties described in section 771(9) to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A).

(f) EFFECTS OF SUSPENSION OF INVESTIGATION.—

(1) IN GENERAL.—If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c), then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 733(b) with respect to the merchandise which is the subject of the investigation, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) LIQUIDATION OF ENTRIES.—

(A) CESSATION OF EXPORTS; COMPLETE ELIMINATION OF DUMPING MARGIN.—If the agreement accepted by the administering authority is an agreement described in subsection (b), then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of merchandise which is the subject of the investigation shall not be suspended under section 733(d)(1),

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 733(d)(2).

(B) OTHER AGREEMENTS.—If the agreement accepted by the administering authority is an agreement described in subsection (c), the liquidation of entries of the merchandise subject to the investigation shall be suspended under section 733(d)(1), or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under section 733(d)(2) may be adjusted to reflect the effect of the agreement.

(3) Where investigation is continued.—If, pursuant to subsection (g), the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c), then—

(A) if the final determination by the administering authority or the Commission under section 735 is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue an antidumping duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d), or (c) and (d), and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) Investigation To Be Continued Upon Request.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) an exporter or exporters accounting for a significant proportion of exports to the United States of the merchandise which is the subject of the investigation, or

(2) an interested party described in subparagraph (C), (D), (E), and (F) of section 771(9) which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) Review of Suspension.—

(1) In general.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in subparagraph (C), (D), (E), and (F) of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) Commission investigation.—Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the merchandise which is the subject of the investigation is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 733(b) had been made on that date.

(3) Suspension of liquidation to continue during review period.—The suspension of liquidation of entries of the merchandise which is the subject of the investigation shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review peti-

tion is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of an affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 733(d)(1), and

(B) release any bond or other security, and refund any cash deposit, required under section 733(d)(2).

(i) VIOLATION OF AGREEMENT.—

(1) IN GENERAL.—If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 733(d)(1) of unliquidated entries of the merchandise made on the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d), or (c) and (d), was first entered, or withdrawn from warehouse, for consumption,

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g), issue an antidumping duty order under section 736(a) effective with respect to entries of merchandise liquidation of which was suspended,

(D) if it considers the violation to be intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

(E) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) INTENTIONAL VIOLATION TO BE PUNISHED BY CIVIL PENALTY.—Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedures, as the penalty imposed for a fraudulent violation of section 592(a) of this Act.

(j) DETERMINATION NOT TO TAKE AGREEMENT INTO ACCOUNT.—In making a final determination under section 735, or in conducting a review under section 751, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1), or continued an investigation under subsection (g), the

Commission and the administering authority shall consider all of the merchandise which is the subject of the investigation without regard to the effect of any agreement under subsection (b) or (c).

(k) TERMINATION OF INVESTIGATION INITIATED BY ADMINISTERING AUTHORITY.—The administering authority may terminate any investigation initiated by the administering authority under section 732(a) after providing notice of such termination to all parties to the investigation.

SEC. 735. FINAL DETERMINATIONS.

(a) FINAL DETERMINATION BY ADMINISTERING AUTHORITY.—

(1) GENERAL RULE.—Within 75 days after the date of its preliminary determination under section 733(b), the administering authority shall make a final determination of whether the merchandise which was the subject of the investigation is being, or is likely to be, sold in the United States at less than its fair value.

(2) EXTENSION OF PERIOD FOR DETERMINATION.—The administering authority may postpone making the final determination under paragraph (1) until not later than the 135th day after the date on which it published notice of its preliminary determination under section 733(b) if a request in writing for such a postponement is made by—

(A) exporters who account for a significant proportion of exports of the merchandise which is the subject of the investigation, in a proceeding in which the preliminary determination by the administering authority under section 733(b) was affirmative, or

(B) the petitioner, in a proceeding in which the preliminary determination by the administering authority under section 733(b) was negative.

(3) CRITICAL CIRCUMSTANCES DETERMINATIONS.—If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 733(e), shall also contain a finding of whether—

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 733(e)(1) was negative.

(b) FINAL DETERMINATION BY COMMISSION.—

(1) IN GENERAL.—The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a)(1).

(2) PERIOD FOR INJURY DETERMINATION FOLLOWING AFFIRMATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 733(b) is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 733(b), or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a).

(3) PERIOD FOR INJURY DETERMINATION FOLLOWING NEGATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 733(b) is negative, and its final determination under subsection (a) is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) CERTAIN ADDITIONAL FINDINGS.—

(A) If the finding of the administering authority under subsection (a)(2) is affirmative, then the final determination of the Commission shall include a finding as to whether the material injury is by reason of massive imports described in subsection (a)(3) to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the duty imposed by section 731 retroactively on those imports.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of the imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) would have been found but for any suspension of liquidation of entries of the merchandise.

(c) EFFECT OF FINAL DETERMINATIONS.—

(1) EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the determination of the administering authority under subsection (a) is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information as to which confidential treatment has been given by the administering authority, and

(B) in cases where the preliminary determination by the administering authority under section 733(b) was negative, the administering authority shall order under paragraphs (1) and (2) of section 733(d) the suspension of liquidation and the posting of a cash deposit, bond, or other security.

(2) ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue an antidumping duty order under section 736(a). If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 703(d)(1), and

(B) release any bond or other security, and refund any cash deposit, required under section 733(d)(2).

(3) EFFECT OF NEGATIVE DETERMINATIONS UNDER SUBSECTIONS (a)(3) AND (b)(4)(A).—If the determination of the administering authority or the Commission under subsection (a)(3) or (b)(4)(A), respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 733(e)(2), and

(B) release any bond or other security, and refund any cash deposit required, under section 733(d)(2) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 733(e)(2).

(4) EFFECT OF AFFIRMATIVE DETERMINATION UNDER SUBSECTION (a)(3).—If the determination of the administering authority under subsection (a)(3) is affirmative, then the administering authority shall—

(A) in cases where the preliminary determinations by the administering authority under sections 733(b) and 733(e)(1) were both affirmative, continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 733(e)(2);

(B) In cases where the preliminary determination by the administering authority under section 733(b) was affirmative, but the preliminary determination under section 733(e)(1) was negative, shall modify any suspension of liquidation and security requirement previously ordered under section 733(d) to apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered; or

(C) in cases where the preliminary determination by the administering authority under section 733(b) was negative, shall apply any suspension of liquidation and security requirement ordered under subsection 735(c)(1)(B) to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation is first ordered.

(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

SEC. 736. ASSESSMENT OF DUTY.

(a) PUBLICATION OF ANTIDUMPING DUTY ORDER.—Within 7 days after being notified by the Commission of an affirmative determination under section 735(b), the administering authority shall publish an antidumping duty order which—

(1) directs customs officers to assess an antidumping duty equal to the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than—

(A) 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption, or

(B) in the case of merchandise not sold prior to its importation into the United States, 12 months after the end of the annual accounting period of the manufacturer or exporter within which it is sold in the United States to a person who is not the exporter of that merchandise,

(2) includes a description of the class or kind of merchandise to which it applies, in such detail as the administering authority deems necessary, and

(3) requires the deposit of estimated antidumping duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) IMPOSITION OF DUTY.—

(1) GENERAL RULE.—If the Commission, in its final determination under section 735(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 733(d)(1) would have led to a finding of material injury, then entries of the merchandise subject to the antidumping duty order, the liquidation of which has been suspended under section 733(d)(1), shall be subject to the imposition of antidumping duties under section 731.

(2) SPECIAL RULE.—If the Commission, in its final determination under section 735(b), finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then merchandise subject to an antidumping duty order which is entered, or withdrawn from warehouse, for

consumption on or after the date of publication of notice of an affirmative determination of the Commission under section 735(b) shall be subject to the assessment of antidumping duties under section 731, and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

(c) SECURITY IN LIEU OF ESTIMATED DUTY PENDING EARLY DETERMINATION OF DUTY.—

(1) CONDITIONS FOR WAIVER OF DEPOSIT OF ESTIMATED DUTIES.—The administering authority may permit, for not more than 90 days after the date of publication of an order under subsection (a), the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under subsection (a)(3) if, on the basis of information presented to it by any manufacturer, producer, or exporter in such form and within such time as it may require, it is satisfied that it will be able to determine, within 90 days after the date of publication of an order under subsection (a), the foreign market value and the United States price for all merchandise of such manufacturer, producer, or exporter described in that order which was entered, or withdrawn from warehouse, for consumption, and was sold to any person that is not related to such manufacturer, producer, or exporter, on or after the date of publication of—

(A) an affirmative preliminary determination by the administering authority under section 733(b), or

(B) if its determination under section 733(b) was negative, an affirmative final determination by the administering authority under section 735(a),

and before the date of publication of the affirmative final determination by the Commission under section 735(b).

(2) NOTICE; HEARING.—If the administering authority permits the posting of a bond or other security in lieu of the deposit of estimated antidumping duties under paragraph (1), it shall—

(A) publish notice of its action in the Federal Register, and

(B) upon the request of any interested party, hold a hearing in accordance with section 774 before determining the foreign market value and the United States price of the merchandise.

(3) DETERMINATIONS TO BE BASIS OF ANTIDUMPING DUTY.—The administering authority shall publish notice in the Federal Register of the results of its determination of foreign market value and United States price, and that determination shall be the basis for the assessment of antidumping duties on entries of merchandise to which the notice under this subsection applies and also shall be the basis for the deposit of estimated antidumping duties on future entries of merchandise of manufacturers, producers, or exporters described in paragraph (1) to which the order issued under subsection (a) applies.

SEC. 737. TREATMENT OF DIFFERENCE BETWEEN DEPOSIT OF ESTIMATED ANTIDUMPING DUTY AND FINAL ASSESSED DUTY UNDER ANTIDUMPING DUTY ORDER.

(a) DEPOSIT OF ESTIMATED ANTIDUMPING DUTY UNDER SECTION 733(d)(2).—If the amount of a cash deposit collected as security for an estimated antidumping duty under section 733(d)(2) is different from the amount of the antidumping duty determined under an antidumping duty order published under section 736, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 735(b) is published shall be—

(1) disregarded, to the extent the cash deposit collected is lower than the duty under the order, or

(2) refunded, to the extent the cash deposit is higher than the duty under the order.

(b) DEPOSIT OF ESTIMATED ANTIDUMPING DUTY UNDER SECTION 736(a)(3).—If the amount of an estimated antidumping duty deposited under section 736(a)(3) is different from the amount of the antidumping duty determined under an antidumping duty order published under section 736, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 735(b) is published shall be—

(1) collected, to the extent that the deposit under section 736(a)(3) is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 736(a)(3) is higher than the duty determined under the order,

together with interest as provided by section 778.

SEC. 738. CONDITIONAL PAYMENT OF ANTIDUMPING DUTY.

(a) GENERAL RULE.—For all entries, or withdrawals from warehouse, for consumption of merchandise subject to an antidumping duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class or kind to the person by whom or for whose account it was imported unless that person complies with the requirements of subsection (b) and deposits with the appropriate customs officer an estimated antidumping duty in an amount determined by the administering authority.

(b) IMPORTER REQUIREMENTS.—In order to meet the requirements of this subsection, a person shall—

(1) furnish, or arrange to have furnished, to the appropriate customs officer such information as the administering authority deems necessary for determining the United States price of the merchandise imported by or for the account of that person, and such other information as the administering authority deems necessary for ascertaining any antidumping duty to be imposed under this title;

(2) maintain and furnish to the customs officer such records concerning the sale of the merchandise as the administering authority, by regulation, requires;

(3) state under oath before the customs officer that he is not an exporter, or if he is an exporter, declare under oath at the time of entry the exporter's sales price of the merchandise to the customs officer if it is then known, or, if not, so declare

within 30 days after the merchandise has been sold, or has been made the subject of an agreement to be sold, in the United States; and

(4) pay, or agree to pay on demand, to the customs officer the amount of antidumping duty imposed under section 731 on that merchandise.

2. Countervailing Duty Law

a. Section 303 of Tariff Act of 1930, as amended

[19 U.S.C. 1303; P.L. 71-361, as amended by P.L. 93-618, P.L. 96-6, and P.L. 96-39]

SEC. 303. COUNTERVAILING DUTIES.

(a) LEVY OF COUNTERVAILING DUTIES.—(1) Except in the case of an article or merchandise which is the product of a country under the Agreement (within the meaning of section 701(b) of this Act), whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation, shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government, then upon the importation of such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to any duties otherwise imposed, a duty equal to the net amount of such bounty or grant, however the same be paid or bestowed.

(2) In the case of any imported article or merchandise which is free of duty, duties may be imposed under this section only if there are affirmative determinations by the Commission under title VII; except that such a determination shall not be required unless a determination of injury is required by the international obligations of the United States.

(b) REGULATIONS PRESCRIBED BY ADMINISTERING AUTHORITY; IMPORTED ARTICLES OR MERCHANDISE WHICH ARE NOT DUTY FREE.—The duty imposed under subsection (a) shall be imposed, under regulations prescribed by the administering authority (as defined in section 771(1)), in accordance with title VII of this Act (relating to the imposition of countervailing duties) except that, in the case of any imported article or merchandise which is not free of duty—

(1) no determination by the United States International Trade Commission under section 703(a), 704, or 705(b) shall be required,

(2) an investigation may not be suspended under section 704(c),

(3) no determination as to the presence of critical circumstances shall be made under section 703(e) or 705 (a)(2) or (b)(4)(A), and

(4) any reference to determinations by the Commission, or to the suspension of an investigation under section 704(c) which

are not permitted or required by this subsection shall be disregarded.

[(c) Repealed.—]

(d) Temporary Provision While Negotiations Are in Progress.—(1) It is the sense of the Congress that the President, to the extent practicable and consistent with United States interests, seek through negotiations the establishment of internationally agreed rules and procedures governing the use of subsidies (and other export incentives) and the application of countervailing duties.

(2) If, after seeking information and advice from such agencies as he may deem appropriate, the Secretary of the Treasury determines, at any time during the four-year period beginning on the date of the enactment of the Trade Act of 1974, that—

(A) adequate steps have been taken to reduce substantially or eliminate during such period the adverse effect of a bounty or grant which he has determined is being paid or bestowed with respect to any article or merchandise;

(B) there is a reasonable prospect that, under section 102 of the Trade Act of 1974, successful trade agreements will be entered into with foreign countries or instrumentalities providing for the reduction or elimination of barriers to or other distortions of international trade; and

(C) the imposition of the additional duty under this section with respect to such article or merchandise would be likely to seriously jeopardize the satisfactory completion of such negotiations;

the imposition of the additional duty under this section with respect to such article or merchandise shall not be required during the remainder of such four-year period. This paragraph shall not apply with respect to any case involving non-rubber footwear pending on the date of the enactment of the Trade Act of 1974 until and unless agreements which temporize imports of non-rubber footwear become effective.

(3) The determination of the Secretary under paragraph (2) may be revoked by him, in his discretion, at any time, and any determination made under such paragraph shall be revoked whenever the basis supporting such determination no longer exists. The additional duty provided under this section shall apply with respect to any affected articles or merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of any revocation under this subsection in the Federal Register.

(4)(A) The four-year period referred to in paragraph (2) is extended from January 2, 1979, until whichever of the following dates first occurs:

(i) The date on which either House of Congress defeats on a vote of final passage, in accordance with the provisions of section 151 of the Trade Act of 1974, implementing legislation with respect to a multilateral trade agreement or agreements governing the use of subsidies.

(ii) The date of the enactment of such implementing legislation.

(iii) September 30, 1979.

(B) Any determination made by the Secretary under this subsection with respect to merchandise of a country which, if title VII of the Tariff Act of 1930 were in effect, would, as determined by the President, be a country under the Agreement (within the meaning of section 701(b) of such Act), which is in effect on September 29, 1979, or on the day before the date of the enactment of the Trade Agreements Act of 1979 (whichever of such dates first occurs), shall remain in effect until whichever of the following dates first occurs:

(i) The date on which the United States International Trade Commission makes a determination under section 104 of the Trade Agreements Act of 1979.

(ii) The date such determination is revoked under paragraph (3).

(iii) The date of adoption of a resolution of disapproval of such determination under subsection (e)(2).

(e) Reports to Congress.—(1) Whenever the Secretary makes a determination under subsection (d)(2) with respect to any article or merchandise, he shall promptly transmit to the House of Representatives and the Senate a document setting forth the determination, together with his reasons therefor.

(2) If, at any time after the document referred to in paragraph (1) is delivered to the House of Representatives and the Senate, either the House or the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval under the procedures set forth in section 152 of the Trade Act of 1974, then such determination under subsection (d)(2) with respect to such article or merchandise shall have no force or effect beginning with the day after the date of the adoption of such resolution of disapproval, and the additional duty provided under this section with respect to such article or merchandise shall apply with respect to articles or merchandise entered, or withdrawn from warehouse, for consumption on or after such day.

(f) Cross Reference.—For provisions of law applicable in the case of articles and merchandise which are the product of countries under the Agreement within the meaning of section 701(b) of this Act, see title VII of this Act.

Section 331(d)(3) of Trade Act of 1974

[19 U.S.C. 1303 note; P.L. 93–618]

Sec. 331(d)(3). Any article which is entered or withdrawn from warehouse free of duty as a result of action taken under title V of this Act shall be considered a nondutiable article for purposes of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303).

b. Transition Rules: Sections 102 and 104 of Trade Agreements Act of 1979

[19 U.S.C. 1671 note; P.L. 96–39]

SEC. 102. PENDING INVESTIGATIONS.

(a) Pending Investigations of Bounties or Grants.—If, on the effective date of the application of title VII of the Tariff Act of 1930 to imports from a country, there is an investigation in progress under section 303 of that Act as to whether a bounty or grant is being paid or bestowed on imports from such country, then:

(1) If the Secretary of the Treasury has not yet made a preliminary determination under section 303 of that Act as to whether a bounty or grant is being paid or bestowed, he shall terminate the investigation under section 303 and the matter previously under investigation shall be subject to this title as if the affirmative determination called for in section 702 of that Act were made with respect to that matter on the effective date of the application of title VII of that Act to such country.

(2) If the Secretary has made a preliminary determination under such section 303, but not a final determination, as to whether a bounty or grant is being paid or bestowed, he shall terminate the investigation under such section 303 and the matter previously under investigation shall be subject to the provisions of title VII of that Act as if the preliminary determination under section 303 were a preliminary determination under section 703 of that title made on the effective date of the application of that title to such country.

(b) PENDING INVESTIGATIONS OF LESS-THAN-FAIR-VALUE SALES.—If, on the effective date of title VII of the Tariff Act of 1930, there is an investigation in progress under the Antidumping Act, 1921, as to whether imports from a country are being, or are likely to be, sold in the United States or elsewhere at less than fair value, then:

(1) If the Secretary has not yet made a preliminary determination under the Antidumping Act, 1921, as to the question of less-than-fair value sales, he shall terminate the investigation and the United States International Trade Commission shall terminate any investigation under section 201(c)(2) of the Antidumping Act, 1921, and the matter previously under investigation shall be subject to the provisions of title VII of the Tariff Act of 1930 as if the affirmative determination called for in section 732 were made with respect to such matter on the effective date of title VII of the Tariff Act of 1930.

(2) If the Secretary has made under the Antidumping Act, 1921, a preliminary determination, but not a final determination, that imports from such country are being or are likely to be sold in the United States or elsewhere at less than fair value, the investigation shall be terminated and the matter previously under investigation shall be subject to the provisions of title VII of the Tariff Act of 1930 as if the preliminary determination under the Antidumping Act, 1921, were a preliminary determination under section 733 of that title made on the effective date of title VII of the Tariff Act of 1930.

(c) PENDING INVESTIGATIONS OF INJURY.—If, on the effective date of the application of title VII of the Tariff Act of 1930 to imports from a country, the United States International Trade Commission is conducting an investigation under section 303 of the Tariff Act of 1930 or section 201(a) of the Antidumping Act, 1921, as to whether an industry in the United States is being, or is likely to be injured, or is prevented from being established, it shall terminate any such investigation and initiate an investigation, under subtitle A or B of title VII of the Tariff Act of 1930, which shall be completed within 75 days and—

(1) treat any final determination of the Secretary of the Treasury under section 303 as a final determination under section 705(a) of the Tariff Act of 1930 and consider the net amount of the bounty or grant estimated or determined under section 303 as the net subsidy amount under subtitle A of that title; and

(2) treat any final determination of the Secretary of the Treasury under the Antidumping Act, 1921, as a final determination under section 735(a) of the Tariff Act of 1930.

SEC. 104. TRANSITION RULES FOR COUNTERVAILING DUTY ORDERS.

(a) WAIVED COUNTERVAILING DUTY ORDERS.—

(1) NOTIFICATION OF COMMISSION.—The administering authority shall notify the United States International Trade Commission by January 7, 1980, of any countervailing duty order in effect on January 1, 1980—

(A)(i) for which the Secretary of the Treasury has waived the imposition of countervailing duties under section 303(d) of the Tariff Act of 1930 (19 U.S.C. 1303(d)), and

(ii) which applies to merchandise other than quota cheese (as defined in section 701(c)(1) of this Act), which is a product of a country under the Agreement,

(B) published on or after the date of the enactment of this Act, and before January 1, 1980, with respect to products of a country under the Agreement (as defined in section 701(b) of the Tariff Act of 1930), or

(C) applicable to frozen, boneless beef from the European Communities under Treasury Decision 76-109,

and shall furnish to the Commission the most current information it has with respect to the net subsidy benefitting the merchandise subject to the countervailing duty order.

(2) DETERMINATION BY THE COMMISSION.—Within 180 days after the date on which it receives the information from the administering authority under paragraph (1), the Commission shall make a determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise subject to the order.

(3) EFFECT OF DETERMINATION.—

(A) AFFIRMATIVE DETERMINATION.—Upon being notified by the Commission of an affirmative determination under paragraph (2), the administering authority shall terminate the waiver of imposition of countervailing duties for merchandise subject to the order, if any. The countervailing duty order under section 303 of the Tariff Act of 1930 which applies to that merchandise shall remain in effect until revoked, in whole or in part, under section 751(d) of such Act.

(B) NEGATIVE DETERMINATION.—Upon being notified by the Commission of a negative determination under paragraph (2), the administering authority shall revoke the countervailing duty order, and publish notice in the Federal Register of the revocation.

(b) OTHER COUNTERVAILING DUTY ORDERS.—

(1) REVIEW BY COMMISSION UPON REQUEST.—In the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303)—

(A) which is not a countervailing duty order to which subsection (a) applies,

(B) which applies to merchandise which is the product of a country under the Agreement, and

(C) which is in effect on January 1, 1980, or which is issued pursuant to court order in an action brought under section 516(d) of that Act before that date,

the Commission, upon the request of the government of such a country or of exporters accounting for a significant proportion of exports to the United States of merchandise which is covered by the order, submitted within 3 years after the effective date of title VII of the Tariff Act of 1930 shall make a determination under paragraph (2) of this subsection.

(2) DETERMINATION BY THE COMMISSION.—In a case described in paragraph (1) with respect to which it has received a request for review, the Commission shall commence an investigation to determine whether—

(A) an industry in the United States—

(i) would be materially injured, or

(ii) would be threatened with material injury, or

(B) the establishment of an industry in the United States would be materially retarded,

by reason of imports of the merchandise covered by the countervailing duty order if the order were to be revoked. A negative determination by the Commission under this paragraph shall not be based, in whole or in part, on any export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received.

(3) SUSPENSION OF LIQUIDATION; INVESTIGATION TIME LIMITS.—Whenever the Commission receives a request under paragraph (1), it shall promptly notify the administering authority and the administering authority shall suspend liquidation of entries of the affected merchandise made on or after the date of receipt of the Commission's notification, or in the case of butter from Australia, entries of merchandise subject to the assessment of countervailing duties under Treasury Decision 42937, as amended, and collect estimated countervailing duties pending the determination of the Commission. The Commission shall issue its determination in any investigation under this subsection not later than 3 years after the date of commencement of such investigation.

(4) EFFECT OF DETERMINATION.—

(A) AFFIRMATIVE DETERMINATION.—Upon being notified of an affirmative determination under paragraph (2) by the Commission, the administering authority shall liquidate entries of merchandise the liquidation of which was suspended under paragraph (3) of this subsection and impose countervailing duties in the amount of the estimated duties required to be deposited. The countervailing duty order shall remain in effect until revoked, in whole or in part, under section 751(c) of the Tariff Act of 1930.

(B) NEGATIVE DETERMINATION.—Upon being notified of a negative determination under paragraph (2) by the Commission, the administering authority shall revoke the countervailing duty order then in effect, publish notice thereof in the Federal Register, and refund, without payment of interest, any estimated countervailing duties collected during the period of suspension of liquidation.

(c) ALL OUTSTANDING COUNTERVAILING DUTY ORDERS.—Subject to the provisions of subsections (a) and (b), any countervailing duty order issued under section 303 of the Tariff Act of 1930 which is—

(1) in effect on the effective date of title VII of the Tariff Act of 1930 (as added by section 101 of this Act), or

(2) issued pursuant to court order in a proceeding brought before that date under section 516(d) of the Tariff Act of 1930,

shall remain in effect after that date and shall be subject to review under section 751 of the Tariff Act of 1930.

(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the Commission makes a determination under subsection (a) or (b), it shall publish notice of that determination in the Federal Register and notify the administering authority of its determination.

(e) DEFINITIONS.—Whenever any term which is defined in section 771 of the Tariff Act of 1930 is used in this section, it has the same meaning as when it is used in title VII of that Act.

c. Title VII, Subtitle A of Tariff Act of 1930, as amended

[19 U.S.C. 1671; P.L. 71-361, as amended by P.L. 96-39, P.L. 98-181, P.L. 98-573, and P.L. 99-514]

Subtitle A—Imposition of Countervailing Duties

SEC. 701. COUNTERVAILING DUTIES IMPOSED.

(a) GENERAL RULE.—If—

(1) the administering authority determines that—

(A) a country under the Agreement, or

(B) a person who is a citizen or national of such a country, or a corporation, association, or other organization organized in such a country,

is providing, directly or indirectly, a subsidy with respect to the manufacture, production, or exportation of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation, then there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net subsidy. For purposes of this subsection and section 705(b)(1), a reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

(b) COUNTRY UNDER THE AGREEMENT.—For purposes of this subtitle, the term "country under the Agreement" means a country—

(1) between the United States and which the Agreement on Subsidies and Countervailing Measures applies, as determined under section 2(b) of the Trade Agreements Act of 1979,

(2) which has assumed obligations with respect to the United States which are substantially equivalent to obligations under the Agreement, as determined by the President, or

(3) with respect to which the President determines that—

(A) there is an agreement in effect between the United States and that country which—

(i) was in force on June 19, 1979, and

(ii) requires unconditional most-favored-nation treatment with respect to articles imported into the United States,

(B) the General Agreement on Tariffs and Trade does not apply between the United States and that country, and

(C) the agreement described in subparagraph (A) does not expressly permit—

(i) actions required or permitted by the General Agreement on Tariffs and Trade, or required by the Congress, or

(ii) nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

(c) UPSTREAM SUBSIDY.—Whenever the administering authority has reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 771A(a)(1), is being paid or bestowed, the administering authority shall investigate whether an upstream subsidy has in fact been paid or bestowed, and if so, shall include the amount of the upstream subsidy as provided in section 771A(a)(3).

(d) CROSS REFERENCE.—For provisions of law applicable in the case of merchandise which is the product of a country other than a country under the Agreement, see section 303 of this Act.

SEC. 702. PROCEDURES FOR INITIATING A COUNTERVAILING DUTY INVESTIGATION.

(a) INITIATION BY ADMINISTERING AUTHORITY.—A countervailing duty investigation shall be commenced whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 701(a) exist.

(b) INITIATION BY PETITION.—

(1) PETITION REQUIREMENTS.—A countervailing duty proceeding shall be commenced whenever an interested party described in subpargraph (C), (D), (E), or (F) of section 771(9) files

a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 701(a), and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) SIMULTANEOUS FILING WITH COMMISSION.—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(3) PETITION BASED UPON A DEROGATION OF AN INTERNATIONAL UNDERTAKING ON OFFICIAL EXPORT CREDITS.—If the sole basis of a petition filed under subsection 702(b)(1) is the derogation of an international undertaking on official export credits, the Administering Authority shall immediately notify the Secretary of the Treasury who shall, in consultation with the Administering Authority, within twenty days determine the existence and estimated value of the derogation, if any, and shall publish such determination in the Federal Register.

(c) PETITION DETERMINATION.—Within 20 days after the date on which a petition is filed under subsection (b), the administering authority shall—

(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 701(a) and contains information reasonably available to the petitioner supporting the allegations,

(2) if the determination is affirmative, commence an investigation to determine whether a subsidy is being provided with respect to the class or kind of merchandise described in the petition, and provide for the publication of notice of the determination to commence an investigation in the Federal Register, and

(3) if the determination is negative, dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and provide for the publication of notice of the determination in the Federal Register.

(d) NOTIFICATION TO COMMISSION OF DETERMINATION.—The administering authority shall—

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c), and

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

SEC. 703. PRELIMINARY DETERMINATIONS.

(a) DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.—Except in the case of a petition dismissed by the administering authority under section 702(c)(3), the Commission, within 45 days after the date on which a petition is filed under section 702(b) or on which it receives notice from the administering authority of an investigation commenced under section 702(a), shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable indication that—

(1) an industry in the United States—

(A) is materially injured, or

(B) is threatened with material injury, or

(2) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise which is the subject of the investigation by the administering authority. If that determination is negative, the investigation shall be terminated.

(b)(1) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—Within 85 days after the date on which a petition is filed under section 702(b), or an investigation is commenced under section 702(a), but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that a subsidy is being provided with respect to the merchandise which is the subject of the investigation. If the determination of the administering authority under this subsection is affirmative, the determination shall include an estimate of the net subsidy.

(2) Notwithstanding subsection (b)(1), when the petition is one subject to subsection 702(b)(3), the administering authority shall, taking into account the nature of the subsidy concerned, make the determination required by subsection 703(b)(1) on an expedited basis and within 85 days after the date on which the petition is filed under section 702(b) unless the provisions of section 703(c) apply.

(3) PRELIMINARY DETERMINATION UNDER WAIVER OF VERIFICATION.—Within 55 days after the initiation of an investigation the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 50 days of the investigation, and, if there appears to be sufficient information available upon which the determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available nonconfidential information and all other information which is disclosed pursuant to section 777. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), or (F) of section 771(9) to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a determination made on the basis of the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), or (F) of section 771(9) to whom the disclosure was made, and the authority finds that sufficient information is then avail-

able upon which the preliminary determination can reasonably be based, a preliminary determination shall be made on an expedited basis on the basis of the record established during the first 50 days after the investigation was initiated.

(c) EXTENSION OF PERIOD IN EXTRAORDINARILY COMPLICATED CASES.—

(1) IN GENERAL.—If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b), or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the alleged subsidy practices;

(II) the novelty of the issues presented;

(III) the need to determine the extent to which particular subsidies are used by individual manufacturers, producers, and exporters; or

(IV) the number of firms whose activities must be investigated; and

(ii) additional time is necessary to make the preliminary determination,

then the administering authority may postpone making the preliminary determination under subsection (b) until not later than the 150th day after the date on which a petition is filed under section 702(b), or an investigation is commenced under section 702(a).

(2) NOTICE OF POSTPONEMENT.—The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b), if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement. Notice of the postponement shall be published in the Federal Register.

(d) EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority—

(1) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register,

(2) shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise concerned equal to the estimated amount of the net subsidy, and

(3) shall make available to the Commission all information upon which its determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Com-

mission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) CRITICAL CIRCUMSTANCES DETERMINATIONS.—

(1) IN GENERAL.—If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly determine, on the basis of the best information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A) the alleged subsidy is inconsistent with the Agreement, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

(2) SUSPENSION OF LIQUIDATION.—If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(1) shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.

(f) NOTICE OF DETERMINATIONS.—Whenever the Commission or the administering authority makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(g) TIME PERIOD WHERE UPSTREAM SUBSIDIZATION INVOLVED.—

(1) IN GENERAL.—Whenever the administering authority concludes prior to a preliminary determination under section 703(b), that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed, the time period within which a preliminary determination must be made shall be extended to 250 days after the filing of a petition under section 702(b) or commencement of an investigation under section 702(a) (310 days in cases declared extraordinarily complicated under section 703(c)), if the administering authority concludes that such additional time is necessary to make the required determination concerning upstream subsidization.

(2) EXCEPTIONS.—Whenever the administering authority concludes, after a preliminary determination under section 703(b), that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed—

(A) in cases in which the preliminary determination was negative, the time period within which a final determination must be made shall be extended to 165 or 225 days, as appropriate, under section 705(a)(1); or

(B) in cases in which the preliminary determination is affirmative, the determination concerning upstream subsidization—

(i) need not be made until the conclusion of the first annual review under section 751 of any eventual Countervailing Duty Order, or, at the option of the petitioner, or

(ii) will be made in the investigation and the time period within which a final determination must be made shall be extended to 165 or 225 days, as appropriate, under section 705(a)(1), as appropriate, except that the suspension of liquidation ordered in the preliminary determination shall terminate at the end of 120 days from the date of publication of that determination and not be resumed unless and until the publication of a Countervailing Duty Order under section 706(a).

There may be an extension of time for the making of a final determination under this subsection only if the administering authority determines that such additional time is necessary to make the required determination concerning upstream subsidization.

SEC. 704. TERMINATION OR SUSPENSION OF INVESTIGATION.

(a) TERMINATION OF INVESTIGATION UPON WITHDRAWAL OF PETITION.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), an investigation under this subtitle may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 702(a)

(2) SPECIAL RULES FOR QUANTITATIVE RESTRICTION AGREEMENTS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting, with the government of the country in which the subsidy practice is alleged to occur, an understanding or other kind of agreement to limit the volume of imports into the United States of the merchandise that is subject to the investigation unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

(B) PUBLIC INTEREST FACTORS.—In making a decision under subparagraph (A) regarding the public interest, the administering authority shall take into account—

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of countervailing duties;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) PRIOR CONSULTATIONS.—Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall, to the extent practicable, consult with—

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) LIMITATION ON TERMINATION BY COMMISSION.—The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 703(b).

(b) AGREEMENTS TO ELIMINATE OR OFFSET COMPLETELY A SUBSIDY OR TO CEASE EXPORTS OF SUBSIDIZED MERCHANDISE.—The administering authority may suspend an investigation if the government of the country in which the subsidy practice is alleged to occur agrees, or exporters who account for substantially all of the imports of the merchandise which is the subject of the investigation agree—

(1) to eliminate the subsidy completely or to offset completely the amount of the net subsidy, with respect to that merchandise exported directly or indirectly to the United States, within 6 months after the date on which the investigation is suspended, or

(2) to cease exports of that merchandise to the United States within 6 months after the date on which the investigation is suspended.

(c) AGREEMENTS ELIMINATING INJURIOUS EFFECT.—

(1) GENERAL RULE.—If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement from a government described in subsection (b), or from exporters described in subsection (b), if the agreement will eliminate completely the injurious effect of exports to the United States of the merchandise which is the subject of the investigation.

(2) CERTAIN ADDITIONAL REQUIREMENTS.—Except in the case of an agreement by a foreign government to restrict the volume of imports of the merchandise which is the subject of the investigation into the United States, the administering authority may not accept an agreement under this subsection unless—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) at least 85 percent of the net subsidy will be offset.

(3) QUANTITATIVE RESTRICTIONS AGREEMENTS.—The administering authority may accept an agreement with a foreign government under this subsection to restrict the volume of imports of merchandise which is the subject of an investigation into the United States, but it may not accept such an agreement with exporters.

(4) DEFINITION OF EXTRAORDINARY CIRCUMSTANCES.—

(A) EXTRAORDINARY CIRCUMSTANCES.—For purposes of this subsection, the term "extraordinary circumstances" means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

(B) COMPLEX.—For purposes of this paragraph, the term "complex" means—

(i) there are a large number of alleged subsidy practices and the practices are complicated,

(ii) the issues raised are novel, or

(iii) the number of exporters involved is large.

(d) ADDITIONAL RULES AND CONDITIONS.—

(1) PUBLIC INTEREST; MONITORING.—The administering authority shall not accept an agreement under subsection (b) or (c) unless—

(A) it is satisfied that suspension of the investigation is in the public interest, and

(B) effective monitoring of the agreement by the United States is practicable.

In applying subparagraph (A) with respect to any quantitative restriction agreement under subsection (c), the administering authority shall take into account, in addition to such other factors as are considered necessary or appropriate, the factors set forth in subsection (a)(2)(B) (i), (ii), and (iii) as they apply to the proposed suspension and agreement, after consulting with the appropriate consuming industries, producers, and workers referred to in subsection (a)(2)(C) (i) and (ii).

(2) EXPORTS OF MERCHANDISE TO UNITED STATES NOT TO INCREASE DURING INTERIM PERIOD.—The administering authority may not accept any agreement under subsection (b) unless that agreement provides a means of ensuring that the quantity of the merchandise covered by that agreement exported to the United States during the period provided for elimination or offset of the subsidy or cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined by the administering authority.

(3) REGULATIONS GOVERNING ENTRY OR WITHDRAWALS.—In order to carry out an agreement concluded under subsection (b) or (c), the administering authority is authorized to prescribe regulations governing the entry, or withdrawal from warehouse, for consumption of merchandise covered by such agreement.

(e) SUSPENSION OF INVESTIGATION PROCEDURE.—Before an investigation may be suspended under subsection (b) or (c) the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced (including any action required of foreign governments), and of how the agreement will meet the requirements of subsections (b) and (d), or (c) and (d), and

(3) permit all interested parties described in section 771(9) to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A).

(f) EFFECTS OF SUSPENSION OF INVESTIGATION.—

(1) IN GENERAL.—If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c), then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 703(b) with respect to the merchandise which is the subject of the investigation, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) LIQUIDATION OF ENTRIES.—

(A) CESSATION OF EXPORTS; COMPLETE ELIMINATION OF NET SUBSIDY.—If the agreement accepted by the administering authority is an agreement described in subsection (b), then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of merchandise which is the subject of the investigation shall not be suspended under section 703(d)(1),

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 703(d)(1).

(B) OTHER AGREEMENTS.—If the agreement accepted by the administering authority is an agreement described in subsection (c), then the liquidation of entries of the merchandise which is the subject of the investigation shall be suspended under section 703(d)(1), or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under section 703(d)(2) may be adjusted to reflect the effect of the agreement.

(3) WHERE INVESTIGATION IS CONTINUED.—If, pursuant to subsection (g), the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c), then—

(A) if the final determination by the administering authority or the Commission under section 705 is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue a countervailing duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d) or (c) and (d), and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) the government of the country in which the subsidy practice is alleged to occur, or

(2) an interested party described in subparagraph (C), (D), (E), and (F) of section 771(9) which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in subparagraph (C), (D), (E), and (F) of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) COMMISSION INVESTIGATION.—Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the merchandise which is the subject of the investigation is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 703(b) had been made on that date.

(3) SUSPENSION OF LIQUIDATION TO CONTINUE DURING REVIEW PERIOD.—The suspension of liquidation of entries of the merchandise which is the subject of the investigation shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review peti-

tion is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of the affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 703(d)(1), and

(B) release any bond or other security, and refund any cash deposit, required under section 703(d)(2).

(i) Violation of Agreement.—

(1) In general.—If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 703(d)(1) of unliquidated entries of the merchandise made on or after the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption,

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination under section 703(b) were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g), issue a countervailing duty order under section 706(a) effective with respect to entries of merchandise the liquidation of which was suspended,

(D) if it considers the violation to be intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

(E) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) Intentional violation to be punished by civil penalty.—Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedure, as the penalty imposed for a fraudulent violation of section 592(a) of this Act.

(j) Determination Not To Take Agreement Into Account.—In making a final determination under section 705, or in conducting a review under section 751, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1), or continued an investigation under subsection (g), the Commission and the administering authority shall consider all of the merchandise which is the subject of the investigation, without regard to the effect of any agreement under subsection (b) or (c).

(k) TERMINATION OF INVESTIGATIONS INITIATED BY ADMINISTERING AUTHORITY.—The administering authority may terminate any investigation initiated by the administering authority under section 702(a) after providing notice of such termination to all parties to the investigation.

SEC. 705. FINAL DETERMINATIONS.

(a) FINAL DETERMINATION BY ADMINISTERING AUTHORITY.—

(1) IN GENERAL.—Within 75 days after the date of the preliminary determination under section 703(b), the administering authority shall make a final determination of whether or not a subsidy is being provided with respect to the merchandise; except that when an investigation under this subtitle is initiated simultaneously with an investigation under subtitle B, which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination under this paragraph to the date of the final determination of the administering authority in such investigation initiated under subtitle B.

(2) CRITICAL CIRCUMSTANCES DETERMINATIONS.—If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 703(e), shall also contain a finding as to whether—

(A) the subsidy is inconsistent with the Agreement, and

(B) there have been massive imports of the class or kind of merchandise involved over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 703(e)(1) was negative.

(b) FINAL DETERMINATION BY COMMISSION.—

(1) IN GENERAL.—The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a).

(2) PERIOD FOR INJURY DETERMINATION FOLLOWING AFFIRMATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 703(b) is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 703(b), or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a).

(3) PERIOD FOR INJURY DETERMINATION FOLLOWING NEGATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 703(b) is negative, and its final determination under subsection (a) is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) CERTAIN ADDITIONAL FINDINGS.—

(A) If the finding of the administering authority under subsection (a)(2) is affirmative, then the final determination of the Commission shall include findings as to whether—

(i) there is material injury which will be difficult to repair, and

(ii) the material injury was by reason of such massive imports of the subsidized merchandise over a relatively short period.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) would have been found but for any suspension of liquidation of entries of that merchandise.

(c) EFFECT OF FINAL DETERMINATIONS.—

(1) EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the determination of the administering authority under subsection (a) is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority, and

(B) in cases where the preliminary determination by the administering authority under section 703(b) was negative, the administering authority shall order under paragraphs (1) and (2) of section 703(d) the suspension of liquidation and the posting of a cash deposit, bond, or other security.

(2) ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue a coun-

tervailing duty order under section 706(a). If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 703(d)(1), and

(B) release any bond or other security and refund any cash deposit required under section 703(d)(2).

(3) EFFECT OF NEGATIVE DETERMINATIONS UNDER SUBSECTIONS (a)(2) AND (b)(4)(A).—If the determination of the administering authority or the Commission under subsection (a)(2) and (b)(4)(A), respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 703(e)(2), and

(B) release any bond or other security, and refund any cash deposit required, under section 703(d)(2) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 703(e)(2).

(4) EFFECT OF AFFIRMATIVE DETERMINATION UNDER SUBSECTION (a)(2).—If the determination of the administering authority under subsection (a)(2) is affirmative, then the administering authority shall—

(A) in cases where the preliminary determinations by the administering authority under sections 703(b) and 703(e)(1) were both affirmative, continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 703(e)(2);

(B) in cases where the preliminary determination by the administering authority under section 703(b) was affirmative, but the preliminary determination under section 703(e)(1) was negative, shall modify any suspension of liquidation and security requirement previously ordered under section 703(d) to apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered; or

(C) in cases where the preliminary determination by the administering authority under section 703(b) was negative, shall apply any suspension of liquidation and security requirement ordered under subsection 703(c)(1)(B) to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation is first ordered.

(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

SEC. 706. ASSESSMENT OF DUTY.

(a) Publication of Countervailing Duty Order.—Within 7 days after being notified by the Commission of an affirmative determination under section 705(b), the administering authority shall publish a countervailing duty order which—

(1) directs customs officers to assess a countervailing duty equal to the amount of the net subsidy determined or estimated to exist, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption,

(2) shall presumptively apply to all merchandise of such class or kind exported from the country investigated, except that if—

(A) the administering authority determines there is a significant differential between companies receiving subsidy benefits, or

(B) a State-owned enterprise is involved,

the order may provide for differing countervailing duties,

(3) includes a description of the class or kind of merchandise to which it applies, in such detail as the administering authority deems necessary, and

(4) requires the deposit of estimated countervailing duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) Imposition of Duties.—

(1) General rule.—If the Commission, in its final determination under section 705(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 703(d)(1), would have led to a finding of material injury, then entries of the merchandise subject to the countervailing duty order, the liquidation of which has been suspended under section 703(d)(1), shall be subject to the imposition of countervailing duties under section 701(a).

(2) Special rule.—If the Commission, in its final determination under section 705(b), finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then merchandise subject to a countervailing duty order which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of notice of an affirmative determination of the Commission under section 705(b) shall be subject to the imposition of countervailing duties under section 701(a), and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of countervailing duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

SEC. 707. TREATMENT OF DIFFERENCE BETWEEN DEPOSIT OF ESTIMATED COUNTERVAILING DUTY AND FINAL ASSESSED DUTY UNDER COUNTERVAILING DUTY ORDER.

(a) Deposit of Estimated Countervailing Duty Under Section 703(d)(2).—If the amount of a cash deposit, or the amount of any bond or other security, required as security for an estimated countervailing duty under section 703(d)(2) is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 706, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 705(b) is published shall be—

(1) disregarded, to the extent that the cash deposit, bond, or other security is lower than the duty under the order, or

(2) refunded or released, to the extent that the cash deposit, bond, or other security is higher than the duty under the order.

(b) Deposit of Estimated Countervailing Duty Under Section 706(a)(3).—If the amount of an estimated countervailing duty deposited under section 706(a)(3) is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 706, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 705(b) is published shall be—

(1) collected, to the extent that the deposit under section 706(a)(3) is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 706(a)(3) is higher than the duty determined under the order,

together with interest as provided by section 778.

SEC. 708. EFFECT OF DEROGATION OF EXPORT-IMPORT BANK FINANCING.

Nothing in this title shall be interpreted as superseding the provisions of section 1912 of the Export-Import Bank Act Amendments of 1978, except that in the event of an assessment of duty based on a derogation under section 706 or action under section 703(d)(2), the Secretary of the Treasury shall not authorize the Bank to provide guarantees, insurance and credits of competing United States sellers pursuant to section 1912 of such Act.

SEC. 709. CONDITIONAL PAYMENT OF COUNTERVAILING DUTY.

(a) In General.—For all entries, or withdrawals from warehouse, for consumption of merchandise subject to a countervailing duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class or kind to the person by whom or for whose account it was imported unless that person complies with the requirement of subsection (b) and deposits with the appropriate customs officer an estimated countervailing duty in an amount determined by the administering authority.

(b) Importer Requirements.—In order to meet the requirements of this subsection, a person shall—

(1) furnish, or arrange to have furnished, to the appropriate customs officer such information as the administering author-

ity deems necessary for ascertaining any countervailing duty to be imposed under this subtitle,

(2) maintain and furnish to the customs officer such records concerning such merchandise as the administering authority, by regulation, requires, and

(3) pay, or agree to pay on demand, to the customs officer the amount of countervailing duty imposed under this subtitle on that merchandise.

3. Provisions Pertaining to Both the Countervailing Duty and Antidumping Laws

[19 U.S.C. 1675, 1677; P.L. 71-361, as amended by P.L. 96-39 and P.L. 98-573]

Subtitle C—Reviews; Other Actions Regarding Agreements

CHAPTER 1—REVIEW OF AMOUNT OF DUTY AND AGREEMENTS OTHER THAN QUANTITATIVE RESTRICTION AGREEMENTS

SEC. 751. ADMINISTRATIVE REVIEW OF DETERMINATIONS.

(a) PERIODIC REVIEW OF AMOUNT OF DUTY.—

(1) IN GENERAL.—At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order under this title or under section 303 of this Act, an antidumping duty order under this title or a finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, the administering authority, if a request for such a review has been received and after publication of notice of such review in the Federal Register, shall—

(A) review and determine the amount of any net subsidy,

(B) review, and determine (in accordance with paragraph (2), the amount of any antidumping duty, and

(C) review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any net subsidy or margin of sales at less than fair value involved in the agreement,

and shall publish the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited, or investigation to be resumed in the Federal Register.

(2) DETERMINATION OF ANTIDUMPING DUTIES.—For the purpose of paragraph (1)(B), the administering authority shall determine—

(A) the foreign market value and United States price of each entry of merchandise subject to the antidumping duty order and included within that determination, and

(B) the amount, if any, by which the foreign market value of each such entry exceeds the United States price of the entry.

The administering authority, without revealing confidential information, shall publish notice of the results of the determination of antidumping duties in the Federal Register, and that determination shall be the basis for the assessment of antidumping duties on entries of the merchandise included within the determination and for deposits of estimated duties.

(b) Reviews Upon Information or Request.—

(1) In general.—Whenever the administering authority or the Commission receives information concerning, or a request for the review of, an agreement accepted under section 704 (other than a quantitative restriction agreement described in subsection (a)(2) or (c)(3)) or 734 (other than a quantitative restriction agreement described in subsection (a)(2)) or an affirmative determination made under section 704(h)(2), 705(a), 705(b), 734(h)(2), 735(a), 735(b), 762(a)(1), or 762(a)(2), which shows changed circumstances sufficient to warrant a review of such determination, it shall conduct such a review after publishing notice of the review in the Federal Register. In reviewing its determination under section 704(h)(2) or 734(h)(2), the Commission shall consider whether, in the light of changed circumstances, an agreement accepted under section 704(c) or 734(c) continues to eliminate completely the injurious effects of imports of the merchandise. During an investigation by the Commission, the party seeking revocation of an antidumping or countervailing duty order shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant revocation of the antidumping or countervailing duty order.

(2) Limitation on period for review.—In the absence of good cause shown—

(A) the Commission may not review a determination under section 705(b) or 735(b), and

(B) the administering authority may not review a determination under section 705(a) or 735(a), or the suspension of an investigation suspended under section 704 or 734,

less than 24 months after the date of publication of notice of that determination or suspension.

(c) Revocation of Countervailing Duty Order or Antidumping Duty Order.—The administering authority may revoke, in whole or in part, a countervailing duty order or an antidumping duty order, or terminate a suspended investigation, after review under this section. The administering authority shall not revoke, in whole or in part, a countervailing duty order or terminate a suspended investigation on the basis of any export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received. Any such revocation or termination shall apply with respect to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on and after a date determined by the administering authority.

(d) Hearings.—Whenever the administering authority or the Commission conducts a review under this section it shall, upon the request of any interested party, hold a hearing in accordance with section 774(b) in connection with that review.

(e) Determination That Basis for Suspension No Longer Exists.—If the determination of the Commission under the last sentence of subsection (b)(1) is negative, the agreement shall be treated as not accepted, beginning on the date of the publication of the Commission's determination, and the administering authority and the Commission shall proceed, under section 704(i) or 734(i), as if the agreement had been violated on that date, except that no duty under any order subsequently issued shall be assessed on merchandise entered, or withdrawn from warehouse, for consumption before that date.

CHAPTER 2—CONSULTATIONS AND DETERMINATIONS REGARDING QUANTITATIVE RESTRICTION AGREEMENTS

SEC. 761. REQUIRED CONSULTATIONS.

(a) AGREEMENTS IN RESPONSE TO SUBSIDIES.—Within 90 days after the administering authority accepts a quantitative restriction agreement under section 704 (a)(2) or (c)(3), the President shall enter into consultations with the government that is party to the agreement for purposes of—

(1) eliminating the subsidy completely, or

(2) reducing the net subsidy to a level that eliminates completely the injurious effect of exports to the United States of the merchandise.

(b) MODIFICATION OF AGREEMENTS ON BASIS OF CONSULTATIONS.—At the direction of the President, the administering authority shall modify a quantitative restriction agreement as a result of consultations entered into under subsection (a).

(c) SPECIAL RULE REGARDING AGREEMENTS UNDER SECTION 704(c)(3).—This chapter shall cease to apply to a quantitative restriction agreement described in section 704(c)(3) at such time as that agreement ceases to have force and effect under section 704(f) or violation is found under section 704(i).

SEC. 762. REQUIRED DETERMINATIONS.

(a) IN GENERAL.—Before the expiration date, if any, of a quantitative restriction agreement accepted under section 704(a)(2) or 704(c)(3) (if suspension of the related investigation is still in effect)—

(1) the administering authority shall, at the direction of the President, initiate a proceeding to determine whether any subsidy is being provided with respect to the merchandise subject to the agreement and, if being so provided, the net subsidy; and

(2) if the administering authority initiates a proceeding under paragraph (1), the Commission shall determine whether imports of the merchandise of the kind subject to the agreement will, upon termination of the agreement, materially injure, or threaten with material injury, an industry in the United States or materially retard the establishment of such an industry.

(b) DETERMINATIONS.—The determinations required to be made by the administering authority and the Commission under subsection (a) shall be made under such procedures as the administering authority and the Commission, respectively, shall by regulation prescribe, and shall be treated as final determinations made under section 705 for purposes of judicial review under section 516A. If the determinations by each are affirmative, the administering authority shall—

(1) issue a countervailing duty order under section 706 effective with respect to merchandise entered on and after the date on which the agreement terminates; and

(2) order the suspension of liquidation of all entries of merchandise subject to the order which are entered, or withdrawn from warehouse for consumption, on or after the date of publication of the order in the Federal Register.

(c) Hearings.—The determination proceedings required to be prescribed under subsection (b) shall provide that the administering authority and the Commission must, upon the request of any interested party, hold a hearing in accordance with section 774 on the issues involved.

Subtitle D—General Provisions

SEC. 771. DEFINITIONS; SPECIAL RULES.

For purposes of this title—

(1) Administering authority.—The term "administering authority" means the Secretary of the Treasury, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this title are transferred by law.[1]

(2) Commission.—The term "Commission" means the United States International Trade Commission.

(3) Country.—The term "country" means a foreign country, a political subdivision, dependent territory, or possession of a foreign country, and, except for the purpose of antidumping proceedings, may include an association of 2 or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

(4) Industry.—

(A) In general.—The term "industry" means the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product; except that in the case of wine and grape products subject to investigation under this title, the term also means the domestic producers of the principal raw agricultural product (determined on either a volume or value basis) which is included in the like domestic product, if those producers allege material injury, or threat of material injury, as a result of imports of such wine and grape products.[2]

(B) Related parties.—When some producers are related to the exporters or importers, or are themselves importers of the allegedly subsidized or dumped merchandise, the term "industry" may be applied in appropriate circumstances by excluding such producers from those included in that industry.

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[1] Functions transferred to Secretary of Commerce by Reorganization Plan No. 3 of 1979.

[2] As provided in section 626(c)(2) of the Trade and Tariff Act of 1984 (P.L. 98-573), the language following the semicolon added by section 612(a)(1) of that Act shall not apply with respect to petitions filed (or refiled under paragraph (1)) under section 702 or 732 of the Tariff Act of 1930 after September 30, 1986.

(C) Regional industries.—In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if—

(i) the producers within such market sell all or almost all of their production of the like product in question in that market, and

(ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.

In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective output of a like product constitutes a major proportion of the total domestic production of that product, is not injured, if there is a concentration of subsidized or dumped imports into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of the subsidized or dumped imports.

(D) Product lines.—The effect of subsidized or dumped imports shall be assessed in relation to the United States production of a like product if available data permit the separate identification of production in terms of such criteria as the production process or the producer's profits. If the domestic production of the like product has no separate identity in terms of such criteria, then the effect of the subsidized or dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes a like product, for which the necessary information can be provided.

(5) Subsidy.—The term "subsidy" has the same meaning as the term "bounty or grant" as that term is used in section 303 of this Act, and includes, but is not limited to, the following:

(A) Any export subsidy described in Annex A to the Agreement (relating to illustrative list of export subsidies).

(B) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

(i) The provision of capital, loans, or loan guarantees on terms inconsistent with commerical considerations.

(ii) The provision of goods or services at preferential rates.

(iii) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry.

(iv) The assumption of any costs or expenses of manufacture, production, or distribution.

(6) NET SUBSIDY.—For the purpose of determining the net subsidy, the administering authority may subtract from the gross subsidy the amount of—

(A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the subsidy,

(B) any loss in the value of the subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and

(C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received.

(7) MATERIAL INJURY.—

(A) IN GENERAL.—The term "material injury" means harm which is not inconsequential, immaterial, or unimportant.

(B) VOLUME AND CONSEQUENT IMPACT.—In making its determinations under sections 703(a), 705(b), 733(a), and 735(b), the Commission shall consider, among other factors—

(i) the volume of imports of the merchandise which is the subject of the investigation,

(ii) the effect of imports of that merchandise on prices in the United States for like products, and

(iii) the impact of imports of such merchandise on domestic producers of like products.

(C) EVALUATION OF VOLUME AND OF PRICE EFFECTS.—For purposes of subparagraph (B)—

(i) VOLUME.—In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.

(ii) PRICE.—In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—

(I) there has been significant price undercutting by the imported merchandise as compared with the price of like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

(iii) IMPACT ON AFFECTED INDUSTRY.—In examining the impact on the affected industry, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to—

(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(II) factors affecting domestic prices, and

(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.

(iv) CUMULATION.—For purposes of clauses (i) and (ii), the Commission shall cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if such imports compete with each other and with like products of the domestic industry in the United States market.

(D) SPECIAL RULES FOR AGRICULTURAL PRODUCTS.—

(i) The Commission shall not determine that there is no material injury or threat of material injury to United States producers of an agricultural commodity merely because the prevailing market price is at or above the minimum support price.

(ii) In the case of agricultural products, the Commission shall consider any increased burden on government income or price support programs.

(E) SPECIAL RULES.—For purposes of this paragraph—

(i) NATURE OF SUBSIDY.—In determining whether there is a threat of material injury, the Commission shall consider such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement) provided by a foreign country and the effects likely to be caused by the subsidy.

(ii) STANDARD FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) or (D) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.

(F) THREAT OF MATERIAL INJURY.—

(i) IN GENERAL.—In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the merchandise, the Commission shall consider, among other relevant economic factors—

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury, and

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 706 or 736, are also used to produce the merchandise under investigation.

(ii) BASIS FOR DETERMINATION.—Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition.

(8) AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES; AGREEMENT.—The terms "Agreement on Subsidies and Countervailing Measures" and "Agreement" mean the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures) approved under section 2(a) of the Trade Agreements Act of 1979.

(9) INTERESTED PARTY.—The term "interested party" means—

(A) a foreign manufacturer, producer, or exporter, or the United States importer, of merchandise which is the subject of an investigation under this title or a trade or business association a majority of the members of which are importers of such merchandise,

(B) the government of a country in which such merchandise is produced or manufactured,

(C) a manufacturer, producer, or wholesaler in the United States of a like product,

(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product,

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States, and

(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a like product.

(10) LIKE PRODUCT.—The term "like product" means a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.

(11) AFFIRMATIVE DETERMINATIONS BY DIVIDED COMMISSION.—If the Commissioners voting on a determination by the Commission are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph when the issue before the Commission is to determine whether there is—

(A) material injury to an industry in the United States,

(B) threat of material injury to such an industry, or

(C) material retardation of the establishment of an industry in the United States,

by reason of imports of the merchandise, an affirmative vote on any of the issues shall be treated as a vote that the determination should be affirmative.

(12) ATTRIBUTION OF MERCHANDISE TO COUNTRY OF MANUFACTURE OR PRODUCTION.—For purposes of subtitle A, merchandise shall be treated as the product of the country in which it was manufactured or produced without regard to whether it is imported directly from that country and without regard to whether it is imported in the same condition as when exported from that country or in a changed condition by reason of remanufacture or otherwise.

(13) EXPORTER.—For the purpose of determining United States price, the term "exporter" includes the person by whom or for whose account the merchandise is imported into the United States if—

(A) such person is the agent or principal of the exporter, manufacturer, or producer;

(B) such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer;

(C) the exporter, manufacturer, or producer who owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business conducted by such person; or

(D) any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 percent or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 percent or more of such power or control in the business of the exporter, manufacturer, or producer.

(14) **Sold or, in the absence of sales, offered for sale.**—The term "sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

(A) to all purchasers in commercial quantities, or

(B) in the ordinary course of trade to one or more selected purchasers in commercial quantities at a price which fairly reflects the market value of the merchandise,

without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

(15) **Ordinary course of trade.**—The term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind.

(16) **Such or similar merchandise.**—The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which a determination for the purposes of subtitle B of this title can be satisfactorily made:

(A) The merchandise which is the subject of an investigation and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.

(B) Merchandise—

(i) produced in the same country and by the same person as the merchandise which is the subject of the investigation,

(ii) like that merchandise in component material or materials and in the purposes for which used, and

(iii) approximately equal in commercial value to that merchandise.

(C) Merchandise—

(i) produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation,

(ii) like that merchandise in the purposes for which used, and

(iii) which the administering authority determines may reasonably be compared with that merchandise.

(17) **Usual commercial quantities.**—The term "usual commercial quantities", in any case in which the merchandise which is the subject of the investigation is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

SEC. 771A. UPSTREAM SUBSIDIES.

(a) Definition.—The term "upstream subsidy" means any subsidy described in section 771(5)(B) (i), (ii), (iii), or (iv) by the government of a country that—

(1) is paid or bestowed by that government with respect to a product (hereinafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;

(2) in the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) has a significant effect on the cost of manufacturing or producing the merchandise.

In applying this subsection, an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of foreign countries organized into a customs union outside the United States shall be treated as being one country if the subsidy is provided by the customs union.

(b) Determination of Competitive Benefit.—

(1) In general.—Except as provided in paragraph (2), the administering authority shall decide that a competitive benefit has been bestowed when the price for the input product referred to in subsection (a)(1) for such use is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

(2) Adjustments.—If the administering authority has determined in a previous proceeding that a subsidy is paid or bestowed on the input product that is used for comparison under paragraph (1), the administering authority may (A) where appropriate, adjust the price that the manufacturer or producer of merchandise which is the subject of such proceeding would otherwise pay for the product to reflect the effects of the subsidy, or (B) select in lieu of that price a price from another source.

(c) Inclusion of Amount of Subsidy.—If the administering authority decides, during the course of a countervailing duty proceeding that an upstream subsidy is being or has been paid or bestowed regarding the merchandise under investigation, the administering authority shall include in the amount of any countervailing duty imposed on the merchandise an amount equal to the amount of the competitive benefit referred to in subparagraph (1)(B), except that in no event shall the amount be greater that the amount of subsidization determined with respect to the upstream product.

SEC. 772. UNITED STATES PRICE.

(a) United States Price.—For purposes of this title, the term "United States price" means the purchase price, or the exporter's sales price, of the merchandise, whichever is appropriate.

(b) Purchase Price.—For purposes of this section, the term "purchase price" means the price at which merchandise is purchased, or agreed to be purchased, prior to the date of importation, from a reseller or the manufacturer or producer of the merchandise for exportation to the United States. Appropriate adjustments for costs and expenses under subsection (d) shall be made if they are not reflected in the price paid by the person by whom, or for whose account, the merchandise is imported.

(c) EXPORTER'S SALES PRICE.—For purposes of this section, the term "exporter's sales price" means the price at which merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, as adjusted under subsections (d) and (e).

(d) ADJUSTMENTS TO PURCHASE PRICE AND EXPORTER'S SALES PRICE.—The purchase price and the exporter's sales price shall be adjusted by being—

(1) increased by—

(A) when not included in such price, the cost of all containers and covering and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States,

(B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States;

(C) the amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation; and

(D) the amount of any countervailing duty imposed on the merchandise under subtitle A of this title or section 303 of this Act to offset an export subsidy, and

(2) reduced by—

(A) except as provided in paragraph (1)(D), the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and

(B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the country of exportation on the exportation of the merchandise to the United States other than an export tax, duty, or other charge described in section 771(6)(C).

(e) ADDITIONAL ADJUSTMENTS TO EXPORTER'S SALES PRICE.—For purposes of this section, the exporter's sales price shall also be adjusted by being reduced by the amount, if any of—

(1) commissions for selling in the United States the particular merchandise under consideration,

(2) expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, and

(3) any increased value, including additional material and labor, resulting from a process of manufacture or assembly

performed on the imported merchandise after the importation of the merchandise and before its sale to a person who is not the exporter of the merchandise.

SEC. 773. FOREIGN MARKET VALUE.

(a) Determination; Fictitious Market; Sales Agencies.—For purposes of this title—

(1) In general.—The foreign market value of imported merchandise shall be the price, at the time such merchandise is first sold within the United States by the person for whom (or for whose account) the merchandise is imported to any other person who is not described in subsection (e)(3) with respect to such person—

(A) at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual commercial quantities and in the ordinary course of trade for home consumption, or

(B) if not so sold or offered for sale for home consumption, or if the administering authority determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States,

increased by, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of importation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purposes of this title no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

(2) Use of constructed value.—If the administering authority determines that the foreign market value of imported merchandise cannot be determined under paragraph (1)(A), then, notwithstanding paragraph (1)(B), the foreign market value of the merchandise may be the constructed value of that merchandise, as determined under subsection (e).

(3) Indirect sales and offers for sale.—If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 771(13), the prices at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in determining the foreign market value.

(4) Other adjustments.—In determining foreign market value, if it is established to the satisfaction of the administering authority that the amount of any difference between the

United States price and the foreign market value (or that the fact that the United States price is the same as the foreign market value) is wholly or partly due to—

(A) the fact that the commercial quantities, in which such or similar merchandise is sold or, in the absence of sales, offered for sale, for exportation to, or in the principal markets of, the United States, as appropriate, in the ordinary course of trade, are less or are greater than the commercial quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale, in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold for home consumption, then for exportation to countries other than the United States);

(B) other differences in circumstances of sale; or

(C) the fact that merchandise described in paragraph (B) or (C) of section 771(16) is used in determining foreign market value,

then due allowance shall be made therefor.

(b) SALES AT LESS THAN COST OF PRODUCTION.—Whenever the administering authority has reasonable grounds to believe or suspect that sales in the home market of the country of exportation, or, as appropriate, to countries other than the United States, have been made at prices which represent less than the cost of producing the merchandise in question, it shall determine whether, in fact, such sales were made at less than the cost of producing the merchandise. If the administering authority determines that sales made at less than cost of production—

(1) have been made over an extended period of time and in substantial quantities, and

(2) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade,

such sales shall be disregarded in the determination of foreign market value. Whenever sales are disregarded by virtue of having been made at less than the cost of production and the remaining sales, made at not less than cost of production, are determined to be inadequate as a basis for the determination of foreign market value under subsection (a), the administering authority shall employ the constructed value of the merchandise to determine its foreign market value.

(c) STATE-CONTROLLED ECONOMIES.—If available information indicates to the administering authority that the economy of the country from which the merchandise is exported is State-controlled to an extent that sales or offers of sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of foreign market value under subsection (a) of this section, the administering authority shall determine the foreign market value of the merchandise on the basis of the normal costs, expenses, and profits as reflected by either—

(1) the prices, determined in accordance with subsection (a) of this section, at which such or similar merchandise of a non-State-controlled-economy country or countries is sold either—

(A) for consumption in the home market of that country or countries, or

(B) to other countries, including the United States; or

(2) the constructed value of such or similar merchandise in a non-State-controlled-economy country or countries as determined under subsection (e).

(d) SPECIAL RULE FOR CERTAIN MULTINATIONAL CORPORATIONS.—Whenever, in the course of an investigation under this title, the administering authority determines that—

(1) merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm or corporation which also owns or controls, directly or indirectly, other facilities for the production of such or similar merchandise which are located in another country or countries;

(2) the sales of such or similar merchandise by the company concerned in the home market of the exporting country are nonexistent or inadequate as a basis for comparison with the sales of the merchandise to the United States; and

(3) the foreign market value of such or similar merchandise produced in one or more of the facilities outside the country of exportation is higher than the foreign market value of such or similar merchandise produced in the facilities located in the country of exportation,

it shall determine the foreign market value of such merchandise by reference to the foreign market value at which such or similar merchandise is sold in substantial quantities by one or more facilities outside the country of exportation. The administering authority, in making any determination under this paragraph, shall make adjustments for the difference between the costs of production (including taxes, labor, materials, and overhead) of such or similar merchandise produced in facilities outside the country of exportation and costs of production of such or similar merchandise produced in the facilities in the country of exportation, if such differences are demonstrated to its satisfaction. For the purposes of this subsection, in determining foreign market value of such or similar merchandise produced in a country outside of the country of exportation, the administering authority shall determine its price at the time of exportation from the country of exportation and shall make any adjustments required by subsection (a) of this section for the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States by reference to such costs in the country of exportation.

(e) CONSTRUCTED VALUE.—

(1) DETERMINATION.—For the purposes of this title, the constructed value of imported merchandise shall be the sum of—

(A) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(B) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual commercial quantities and in the ordinary course of trade, except that—

(i) the amount for general expenses shall not be less than 10 percent of the cost as defined in subparagraph (A), and

(ii) the amount for profit shall not be less than 8 percent of the sum of such general expenses and cost; and

(C) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise under consideration in condition, packed ready for shipment to the United States.

(2) TRANSACTIONS DISREGARDED; BEST EVIDENCE.—For the purposes of this subsection, a transaction directly or indirectly between persons specified in any one of the subparagraphs in paragraph (3) of this subsection may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of merchandise under consideration. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the subparagraphs in paragraph (3) of this section.

(3) RELATED PARTIES.—The persons referred to in paragraph (2) of this subsection are:

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(f) EXPORTATION FROM AN INTERMEDIATE COUNTRY.—If—

(1) a reseller purchases the merchandise from the manufacturer or producer of the merchandise,

(2) the manufacturer or producer of the merchandise does not know (at the time of the sale to such reseller) the country to which such reseller intends to export the merchandise,

(3) the merchandise is exported by, or on behalf of, such reseller to a country other than the United States,

(4) the merchandise enters the commerce of such country but is not substantially transformed in such country, and

(5) the merchandise is subsequently exported to the United States,

such country shall be treated, for purposes of this section, as the country from which the merchandise was exported.

SEC. 774. HEARINGS.

(a) Investigation Hearings.—

(1) In general.—Except as provided in paragraph (2), the administering authority and the Commission shall each hold a hearing in the course of an investigation upon the request of any party to the investigation before making a final determination under section 705 or 735.

(2) Exception.—If investigations are initiated under subtitle A and subtitle B regarding the same merchandise from the same country within 6 months of each other (but before a final determination is made in either investigation), the holding of a hearing by the Commission in the course of one of the investigations shall be treated as compliance with paragraph (1) for both investigations, unless the Commission considers that special circumstances require that a hearing be held in the course of each of the investigations. During any investigation regarding which the holding of a hearing is waived under this paragraph, the Commission shall allow any party to submit such additional written comment as it considers relevant.

(b) Procedures.—Any hearing required or permitted under this title shall be conducted after notice published in the Federal Register, and a transcript of the hearing shall be prepared and made available to the public. The hearing shall not be subject to the provisions of subchapter II of chapter 5 of title 5, United States Code, or to section 702 of such title.

SEC. 775. SUBSIDY PRACTICES DISCOVERED DURING A PROCEEDING.

If, in the course of a proceeding under this title, the administering authority discovers a practice which appears to be a subsidy, but was not included in the matters alleged in a countervailing duty petition, then the administering authority—

(1) shall include the practice in the proceeding if it appears to be a subsidy with respect to the merchandise which is the subject of the proceeding, or

(2) shall transfer the information concerning the practice (other than confidential information) to the library maintained under section 777(a)(1), if the practice appears to be a subsidy with respect to any other merchandise.

SEC. 776. VERIFICATION OF INFORMATION.

(a) General Rule.—The administering authority shall verify all information relied upon in making—

(1) a final determination in an investigation,

(2) a revocation under section 751(c), and

(3) a review and determination under section 751(a), if—

(A) verification is timely requested by an interested party as defined in section 771(9) (C), (D), (E), or (F), and

(B) no verification was made under this paragraph during the 2 immediately preceding reviews and determinations under that section of the same order, finding, or notice, except that this clause shall not apply if good cause for verification is shown.

In publishing notice of any action referred to in paragraph (1), (2), or (3), the administering authority shall report the methods and procedures used to verify such information. If the administering authority is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its action, which may include, in actions referred to in paragraph (1), the information submitted in support of the petition.

(b) DETERMINATIONS TO BE MADE ON BEST INFORMATION AVAILABLE.—In making their determinations under this title, the administering authority and the Commission shall, whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, use the best information otherwise available.

SEC. 777. ACCESS TO INFORMATION.

(a) INFORMATION GENERALLY MADE AVAILABLE.—

(1) PUBLIC INFORMATION FUNCTION.—There shall be established a library of information relating to foreign subsidy practices and countervailing measures. Copies of material in the library shall be made available to the public upon payment of the costs of preparing such copies.

(2) PROGRESS OF INVESTIGATION REPORTS.—The administering authority and the Commission shall, from time to time upon request, inform the parties to an investigation of the progress of that investigation.

(3) EX PARTE MEETINGS.—The administering authority and the Commission shall maintain a record of any ex parte meeting between—

(A) interested parties or other persons providing factual information in connection with a proceeding, and

(B) the person charged with making the determination, or any person charged with making a final recommendation to that person, in connection with that proceeding,

if information relating to that proceeding was presented or discussed at such meeting. The record of such an ex parte meetings shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.

(4) SUMMARIES; NON-PROPRIETARY SUBMISSIONS.—The administering authority and the Commission may disclose—

(A) any proprietary information received in the course of a proceeding if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and

(B) any information submitted in connection with a proceeding which is not designated as proprietary by the person submitting it.

(b) PROPRIETARY INFORMATION.—

(1) PROPRIETARY STATUS MAINTAINED.—Except as provided in subsection (a)(4)(A) and subsection (c), information submitted to the administering authority or the Commission which is designated as proprietary by the person submitting it shall not be disclosed to any person (other than an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted, or an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this title) without the consent of the person submitting it. The administering authority and the Commission shall require that information for which proprietary treatment is requested be accompanied by—

(A) either—

(i) a non-proprietary summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or

(ii) a statement that the information is not susceptible to summary accompanied by a statement of the reasons in support of the contention, and

(B) either—

(i) a statement which permits the administering authority or the Commission to release under administrative protective order, in accordance with subsection (c), the information submitted in confidence, or

(ii) a statement that the information should not be released under administrative protective order.

(2) UNWARRANTED DESIGNATION.—If the administering authority or the Commission determines, on the basis of the nature and extent of the information or its availability from public sources, that designation of any information as proprietary is unwarranted, then it shall notify the person who submitted it and ask for an explanation of the reasons for the designation. Unless that person persuades the administering authority or the Commission that the designation is warranted, or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party submitting it.

(c) LIMITED DISCLOSURE OF CERTAIN PROPRIETARY INFORMATION UNDER PROTECTIVE ORDER.—

(1) DISCLOSURE BY ADMINISTERING AUTHORITY OR COMMISSION.—

(A) IN GENERAL.—Upon receipt of an application (before or after receipt of the information requested) which describes with particularity the information requested and sets forth the reasons for the request, the administering authority and the Commission may make proprietary information submitted by any other party to the investigation available under a protective order described in subparagraph (B).

(B) PROTECTIVE ORDER.—The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

(2) DISCLOSURE UNDER COURT ORDER.—If the administering authority denies a request for information under paragraph (1), or the Commission denies a request for proprietary information submitted by the petitioner or an interested party in support of the petitioner concerning the domestic price or cost of production of the like product, then application may be made to the United States Customs Court for an order directing the administering authority or the Commission to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that—

(A) the administering authority or the Commission has denied access to the information under subsection (b)(1),

(B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and

(C) the party which submitted the information to which the request relates has been notified, in advance of the hearing, of the request made under this section and of its right to appear and be heard.

SEC. 777A. SAMPLING AND AVERAGING.

(a) IN GENERAL.—For the purposes of determining United States price or foreign market value under sections 772 and 773, and for purposes of carrying out annual reviews under section 751, the administering authority may—

(1) use averaging or generally recognized sampling techniques whenever a significant volume of sales is involved or a significant number of adjustments to prices is required, and

(2) decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.

(b) SELECTION OF SAMPLES AND AVERAGES.—The authority to select appropriate samples and averages shall rest exclusively with the administering authority; but such samples and averages shall be representative of the transactions under investigation.

SEC. 778. INTEREST ON CERTAIN OVERPAYMENTS AND UNDERPAYMENTS.

(a) GENERAL RULE.—Interest shall be payable on overpayments and underpayments of amounts deposited on merchandise entered, or withdrawn from warehouse, for consumption on and after—

(1) the date of publication of a countervailing or antidumping duty order under this title or section 303, or

(2) the date of a finding under the Antidumping Act, 1921.

(b) RATE.—The rate of interest payable under subsection (a) for any period of time is the rate of interest established under section 6621 of the Internal Revenue Code of 1954 for such period.

SEC. 779. DRAWBACKS.

For purposes of any law relating to the drawback of customs duties, countervailing duties and antidumping duties imposed by this title shall be treated as any other customs duties.

Judicial Review: Section 516A of Tariff Act of 1930, as amended

[19 U.S.C. 1516a; P.L. 71-361, as amended by P.L. 96-39, 96-417, 96-542, 97-164, P.L. 98-573, and P.L. 99-514]

SEC. 516A. JUDICIAL REVIEW IN COUNTERVAILING DUTY AND ANTIDUMPING DUTY PROCEEDINGS.

(a) REVIEW OF DETERMINATION.—

(1) REVIEW OF CERTAIN DETERMINATIONS.—Within 30 days after the date of publication in the Federal Register of—

(A) a determination by the administering authority, under 702(c) or 732(c) of this Act, not to initiate an investigation,

(B) a determination by the Commission, under section 751(b) of this Act, not to review a determination based upon changed circumstances, or

(C) a negative determination by the Commission, under section 703(a) or 733(a) of this Act, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation,

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(2) REVIEW OF DETERMINATIONS ON RECORD.—

(A) IN GENERAL.—Within thirty days after—

(i) the date of publication in the Federal Register of—

(I) notice of any determination described in clause (ii), (iii), (iv), or (v) of subparagraph (B), or

(II) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B), or

(ii) the date of mailing of a determination described in clause (vi) of subparagraph (B),

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing a summons, and within thirty days thereafter a complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(B) REVIEWABLE DETERMINATIONS.—The determinations which may be contested under subparagraph (A) are as follows:

(i) Final affirmative determinations by the administering authority and by the Commission under section 705 or 735 of this Act, including any negative part of such a determination (other than a part referred to in clause (ii)).

(ii) A final negative determination by the administering authority or the Commission under section 705 or 735 of this Act, including, at the option of the appellant, any part of a final affirmative determination which specifically excludes any company or product.

(iii) A final determination, other than a determination reviewable under paragraph (1), by the administering authority or the Commission under section 751 of this Act.

(iv) A determination by the administering authority, under section 704 or 734 of this Act, to suspend an antidumping duty or a countervailing duty investigation, including any final determination resulting from a continued investigation which changes the size of the dumping margin or net subsidy calculated, or the reasoning underlying such calculations, at the time the suspension agreement was concluded.

(v) An injurious effect determination by the Commission under section 704(h) or 734(h) of this Act.

(vi) A determination by the administering authority as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order.

(3) EXCEPTION.—Notwithstanding the limitation imposed by paragraph (2)(A)(i)(II) of this subsection, a final affirmative determination by the administering authority under section 705 or 735 of this Act may be contested by commencing an action, in accordance with the provisions of paragraph (2)(A), within thirty days after the date of publication in the Federal Register of a final negative determination by the Commission under section 705 or 735 of this Act.

(4) PROCEDURES AND FEES.—The procedures and fees set forth in subsections (b), (c), and (e) of section 2632 of title 28, United States Code, apply to an action under this section.

(b) STANDARDS OF REVIEW.—

(1) REMEDY.—The court shall hold unlawful any determination, finding, or conclusion found—

(A) in an action brought under paragraph (1) of subsection (a), to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or

(B) in an action brought under paragraph (2) of subsection (a), to be unsupported by substantial evidence on the record, or otherwise not in accordance with law.

(2) RECORD FOR REVIEW.—

(A) IN GENERAL.—For the purposes of this subsection, the record, unless otherwise stipulated by the parties, shall consist of—

(i) a copy of all information presented to or obtained by the Secretary, the administering authority, or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 777(a)(3); and

(ii) a copy of the determination, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

(B) CONFIDENTIAL OR PRIVILEGED MATERIAL.—The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may disclose such material under such terms and conditions as it may order.

(c) LIQUIDATION OF ENTRIES.—

(1) LIQUIDATION IN ACCORDANCE WITH DETERMINATION.—Unless such liquidation is enjoined by the court under paragraph (2) of this subsection, entries of merchandise of the character covered by a determination of the Secretary, the administering authority, or the Commission contested under subsection (a) shall be liquidated in accordance with the determination of the Secretary, the administering authority, or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the Secretary or the administering authority of a notice of a decision of the United States Court of International Trade, or of the United States Court of Appeals for the Federal Circuit, not in harmony with that determination. Such notice of a decision shall be published within ten days from the date of the issuance of the court decision.

(2) INJUNCTIVE RELIEF.—In the case of a determination described in paragraph (2) of subsection (a) by the Secretary, the administering authority, or the Commission, the United States Court of International Trade may enjoin the liquidation of some or all entries of merchandise covered by a determination of the Secretary, the administering authority, or the Commission, upon a request by an interested party for such relief and a proper showing that the requested relief should be granted under the circumstances.

(3) Remand for final disposition.—If the final disposition of an action brought under this section is not in harmony with the published determination of the Secretary, the administering authority, or the Commission, the matter shall be remanded to the Secretary, the administering authority, or the Commission, as appropriate, for disposition consistent with the final disposition of the court.

(d) Standing.—Any interested party who was a party to the proceeding under section 303 of this Act or title VII of this Act shall have the right to appear and be heard as a party in interest before the United States Court of International Trade. The party filing the action shall notify all such interested parties of the filing of an action under this section in the form, manner, style, and within the time prescribed by rules of the court.

(e) Liquidation in Accordance With Final Decision.—If the cause of action is sustained in whole or in part by a decision of the United States Court of International Trade or of the United States Court of Appeals For the Federal Circuit—

(1) entries of merchandise of the character covered by the published determination of the Secretary, the administering authority, or the Commission, which is entered, or withdrawn from warehouse, for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, and

(2) entries, the liquidation of which was enjoined under subsection (c)(2),

shall be liquidated in accordance with the final court decision in the action. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

(f) Definitions.—For purposes of this section—

(1) Administering authority.—The term "administering authority" means the administering authority described in section 771(1) of this Act.

(2) Commission.—The term "Commission" means the United States International Trade Commission.

(3) Interested party.—The term "interested party" means any person described in section 771(9) of this Act.

(4) Secretary.—The term "Secretary" means the Secretary of the Treasury.

4. Enforcement of United States Rights Under Trade Agreements and Response to Certain Foreign Practices

Title III, Chapter 1 of Trade Act of 1974, as amended

[19 U.S.C. 2411; P.L. 93-618, as amended by P.L. 96-39, and P.L. 98-573]

SEC. 301. DETERMINATIONS AND ACTION BY PRESIDENT.

(a) Determinations Requiring Action.—

(1) In general.—If the President determines that action by the United States is appropriate—

(A) to enforce the rights of the United States under any trade agreement; or

(B) to respond to any act, policy, or practice of a foreign country or instrumentality that—

(i) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(ii) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice.

(2) SCOPE OF ACTION.—The President may exercise his authority under this section with respect to any goods or sector—

(A) on a nondiscriminatory basis or solely against the foreign country or instrumentality involved, and

(B) without regard to whether or not such goods or sector were involved in the act, policy, or practice identified under paragraph (1).

(b) OTHER ACTION.—Upon making a determination described in subsection (a), the President, in addition to taking action referred to in such subsection, may—

(1) suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with the foreign country or instrumentality involved;

(2) impose duties or other import restrictions on the goods of, and, notwithstanding any other provision of law, fees or restrictions on the services of, such foreign country or instrumentality for such time as he determines appropriate.

(c) ADDITIONAL ACTIONS ON SERVICES.—

(1) IN GENERAL.—Notwithstanding any other provision of law governing any service sector access authorization, and in addition to the authority conferred in subsection (b), the President may—

(A) restrict, in the manner and to the extent the President deems appropriate, the terms and conditions of any such authorization, or

(B) deny the issuance of any such authorization.

(2) AFFECTED AUTHORIZATIONS.—Actions under paragraph (1) shall apply only with respect to service sector access authorizations granted, or applications therefor pending, on or after the date on which—

(A) a petition is filed under section 302(a), or

(B) a determination to initiate an investigation is made by the United States Trade Representative (hereinafter in this chapter referred to as the "Trade Representative", under section 302(c).

(3) CONSULTATION.—Before the President takes action under subsection (b) or (c) involving the imposition of fees or other restrictions on the services of a foreign country, the Trade Representative shall, if the services involved are subject to regulation by any agency of the Federal Government or of any State, consult, as appropriate, with the head of the agency concerned.

(d) PRESIDENTIAL PROCEDURES.—

(1) ACTION ON OWN MOTION.—If the President decides to take action under this section and no petition requesting action on the matter involved has been filed under section 302, the Presi-

dent shall publish notice of his determination, including the reasons for the determination in the Federal Register. Unless he determines that expeditious action is required, the President shall provide an opportunity for the presentation of views concerning the taking of such action.

(2) ACTION REQUESTED BY PETITION.—Not later than 21 days after the date on which he receives the recommendation of the Trade Representative under section 304 with respect to a petition, the President shall determine what action, if any, he will take under this section, and shall publish notice of his determination, including the reasons for the determination, in the Federal Register.

(e) DEFINITIONS; SPECIAL RULE FOR VESSEL CONSTRUCTION SUBSIDIES.—For purposes of this section—

(1) COMMERCE.—The term "commerce" includes, but is not limited to—

(A) services (including transfers of information) associated with international trade, whether or not such services are related to specific goods, and

(B) foreign direct investment by United States persons with implications for trade in goods or services.

(2) VESSEL CONSTRUCTION SUBSIDIES.—An act, policy, or practice of a foreign country or instrumentality that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country or instrumentality of subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States.

(3) UNREASONABLE.—The term "unreasonable" means any act, policy, or practice which, while not necessarily in violation of or inconsistent with the international legal rights of the United States, is otherwise deemed to be unfair and inequitable. The term includes, but is not limited to, any act, policy, or practice which denies fair and equitable—

(A) market opportunities;

(B) opportunities for the establishment of an enterprise; or

(C) provision of adequate and effective protection of intellectual property rights.

(4) UNJUSTIFIABLE.—

(A) IN GENERAL.—The term "unjustifiable" means any act, policy, or practice which is in violation of, or inconsistent with, the international legal rights of the United States.

(B) CERTAIN ACTIONS INCLUDED.—The term "unjustifiable" includes, but is not limited to, any act, policy, or practice described in subparagraph (A) which denies national or most-favored-nation treatment, the right of establishment, or protection of intellectual property rights.

(5) DEFINITION OF DISCRIMINATORY.—The term "discriminatory" includes, where appropriate, any act, policy, or practice which denies national or most-favored-nation treatment to United States goods, services, or investment.

(6) Service sector access authorization.—The term "service sector access authorization" means any license, permit, order, or other authorization, issued under the authority of Federal law, that permits a foreign supplier of services access to the United States market in a service sector concerned.

SEC. 302. INITIATION OF INVESTIGATIONS BY UNITED STATES TRADE REPRESENTATIVE.

(a) Filing of Petition.—

(1) In general.—Any interested person may file a petition with the United States Trade Representative (hereinafter in this chapter referred to as the "Trade Representative") requesting the President to take action under section 301 and setting forth the allegations in support of the request.

(2) Review of allegations.—The Trade Representative shall review the allegations in the petition and, not later than forty-five days after the date on which he received the petition, shall determine whether to initiate an investigation.

(b) Determinations Regarding Petitions.—

(1) Negative determination.—If the Trade Representative determines not to initiate an investigation with respect to a petition, he shall inform the petitioner of the reasons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

(2) Affirmative determination.—If the Trade Representative determines to initiate an investigation with respect to a petition, he shall initiate an investigation regarding the issues raised. The Trade Representative shall publish a summary of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a public hearing—

(A) within the thirty-day period after the date of the determination (or on a date after such period if agreed to by the petitioner) if a public hearing within such period is requested in the petition; or

(B) at such other time if a timely request therefor is made by the petitioner or by any interested person.

(c) Determination To Initiate by Motion of Trade Representative.—

(1) Determination to initiate.—If the Trade Representative determines with respect to any matter that an investigation should be initiated in order to advise the President concerning the exercise of the President's authority under section 301, the Trade Representative shall publish such determination in the Federal Register and such determination shall be treated as an affirmative determination under subsection (b)(2).

(2) Consultation before initiation.—The Trade Representative shall, before making any determination under paragraph (1), consult with appropriate committees established pursuant to section 135.

SEC. 303. CONSULTATION UPON INITIATION OF INVESTIGATION.

(a) In General.—On the date an affirmative determination is made under section 302(b), the Trade Representative, on behalf of the United States, shall request consultations with the foreign country or instrumentality concerned regarding issues raised in the petition or the determination of the Trade Representative under section 302(c)(1). If the case involves a trade agreement and a mutually acceptable resolution is not reached during the consultation period, if any, specified in the trade agreement, the Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement. The Trade Representative shall seek information and advice from the petitioner (if any) and the appropriate representatives provided for under section 135 in preparing United States presentations for consultations and dispute settlement proceedings.

(c) DELAY OF REQUEST FOR CONSULTATIONS FOR UP TO 90 DAYS.—

(1) IN GENERAL.—Notwithstanding the provisions of subsection (a)—

(A) the United States Trade Representative may delay for up to 90 days any request for consultations under subsection (a) for the purpose of verifying or improving the petition to ensure an adequate basis for consultation, and

(B) if such consultations are delayed by reason of subparagraph (A), each time limitation under section 304 shall be extended for the period of such delay.

(2) NOTICE AND REPORT.—The Trade Representative shall—

(A) publish notice of any delay under paragraph (1) in the Federal Register, and

(B) report to Congress on the reasons for such delay in the report required by section 306.

SEC. 304. RECOMMENDATIONS BY THE TRADE REPRESENTATIVE.

(a) RECOMMENDATIONS.—

(1) IN GENERAL.—On the basis of the investigation under section 302 and the consultations (and the proceedings, if applicable) under section 303 and subject to subsection (b), the Trade Representative shall recommend to the President what action, if any, he should take under section 301 with respect to the matters under investigation. The Trade Representative shall make that recommendation not later than—

(A) 7 months after the date of the initiation of the investigation under section 302(b)(2) if the petition alleges only an export subsidy covered by the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures and hereinafter referred to in this section as the "Subsidies Agreement");

(B) 8 months after the date of the investigation initiation if the petition alleges any matter covered by the Subsidies Agreement other than only an export subsidy;

(C) in the case of a petition involving a trade agreement approved under section 2(a) of the Trade Agreements Act of 1979 (other than the Subsidies Agreement), 30 days after the dispute settlement procedure is concluded; or

(D) 12 months after the date of the investigation initiation in any case not described in subparagraph (A), (B), or (C).

(2) SPECIAL RULE.—In the case of any petition—

(A) an investigation with respect to which is initiated on or after the date of enactment of the Trade Agreements Act of 1979 (including any petition treated under section 903 of that Act as initiated on such date); and

(B) to which the 12-month time limitation set forth in subparagraph (D) of paragraph (1) would but for this paragraph apply;

if a trade agreement approved under section 2(a) of such Act of 1979 that relates to any allegation made in the petition applies between the United States and a foreign country or instrumentality before the 12-month period referred to in subparagraph (B) expires, the Trade Representative shall make the recommendation required under paragraph (1) with respect to the petition not later than the close of the period specified in subparagraph (A), (B), or (C), as appropriate, of such paragraph, and for purposes of such subparagraph (A) or (B), the date of the application of such trade agreement between the United States and the foreign country or instrumentality concerned shall be treated as the date on which the investigation with respect to such petition was initiated; except that consultations and proceedings under section 303 need not be undertaken within the period specified in such subparagraph (A), (B), or (C), as the case may be, to the extent that the requirements under such section were complied with before such period begins.

(3) REPORT IF SETTLEMENT DELAYED.—In any case in which a dispute is not resolved before the close of the minimum dispute settlement period provided for in a trade agreement referred to in paragraph (1)(C) (other than the Subsidies Agreement), the Trade Representative, within 15 days after the close of such period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum period, the status of the case at the close of the period, and the prospects for resolution. For purposes of this paragraph, the minimum dispute settlement period provided for under any such trade agreement is the total period of time that results if all stages of the formal dispute settlement procedures are carried out within the time limitations specified in the agreement, but computed without regard to any extension authorized under the agreement of any stage.

(b) CONSULTATION BEFORE RECOMMENDATION.—Before recommending that the President take action under section 301 with respect to the treatment of any product or service of a foreign country or instrumentality which is the subject of a petition filed under section 302, the Trade Representative, unless he determines that expeditious action is required—

(1) shall provide opportunity for the presentation of views, including public hearing if requested by any interested person;

(2) shall obtain advice from the appropriate advisory representatives provided for under section 135; and

(3) may request the views of the International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to such product or service.

If the Trade Representative does not comply with paragraphs (1) and (2) because expeditious action is required, he shall, after making the recommendation concerned to the President, comply with such paragraphs.

SEC. 305. REQUESTS FOR INFORMATION.

(a) IN GENERAL.—Upon receipt of written request therefor from any person, the Trade Representative shall make available to that person information (other than that to which confidentiality applies) concerning—

(1) the nature and extent of a specific trade policy or practice of a foreign government or instrumentality with respect to particular mechandise, to the extent that such information is available to the Trade Representative or other Federal agencies;

(2) United States rights under any trade agreement and the remedies which may be available under that agreement and under the laws of the United States; and

(3) past and present domestic and international proceedings or actions with respect to the policy or practice concerned.

(b) IF INFORMATION NOT AVAILABLE.—If information that is requested by an interested party under subsection (a) is not available to the Trade Representative or other Federal agencies, the Trade Representative shall, within 30 days after receipt of the request—

(1) request the information from the foreign government; or

(2) decline to request the information and inform the person in writing of the reasons for the refusal.

(c) CERTAIN BUSINESS INFORMATION NOT MADE AVAILABLE.—

(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding any other provision of law (including section 552 of title 5, United States Code), no information requested and received by the Trade Representative in aid of any investigation under this chapter shall be made available to any person if—

(A) the person providing such information certifies that—

(i) such information is business confidential,

(ii) the disclosure of such information would endanger trade secrets or profitability, and

(iii) such information is not generally available;

(B) the Trade Representative determines that such certification is well-founded; and

(C) to the extent required in regulations prescribed by the Trade Representative, the person providing such information provides an adequate nonconfidential summary of such information.

(2) USE OF INFORMATION.—The Trade Representative may—

(A) use such information, or make such information available (in his own discretion) to any employee of the Federal Government for use, in any investigation under this chapter, or

(B) may make such information available to any other person in a form which cannot be associated with, or otherwise identify, the person providing the information.

SEC. 306. ADMINISTRATION.

The Trade Representative shall—

(1) issue regulations concerning the filing of petitions and the conduct of investigations and hearings under this chapter;

(2) keep the petitioner regularly informed of all determinations and developments regarding his case under this section, including the reasons for any undue delays; and

(3) submit a report to the House of Representatives and the Senate semiannually describing the petitions filed and the determinations made (and reasons therefor) under section 302, developments in and current status of each such proceeding, and the actions taken, or the reasons for no action, by the President under section 301.

Foreign Direct Investment

Section 307(b) of Trade and Tariff Act of 1984

[19 U.S.C. 2114d; P.L. 98-573]

SEC. 307. NEGOTIATING AUTHORITY WITH RESPECT TO FOREIGN DIRECT INVESTMENT.

[(a) Amendment of definitions in section 102(g)(3) of Trade Act of 1974.]

(b)(1) If the United States Trade Representative, with the advice of the committee established by section 242 of the Trade Expansion [Act] of 1962 (19 U.S.C. 1872), determines that action by the United States is appropriate to respond to any export performance requirements of any foreign country or instrumentality that adversely affect the economic interests of the United States, then the United States Trade Representative shall seek to obtain the reduction and elimination of such export performance requirements through consultations and negotiations with the foreign country or instrumentality concerned.

(2) In addition to the action referred to in subsection (1), the United States Trade Representative may impose duties or other import restrictions on the products or services of such foreign country or instrumentality for such time as he determines appropriate, including the exclusion from entry into the United States of products subject to such requirements.

(3) Nothing in paragraph (2) or paragraph (3) shall apply to any products or services with respect to which—

(A) any foreign direct investment (including a purchase of land or facilities) has been made directly or indirectly by any United States person before the date of enactment of this Act, or

(B) any written commitment relating to a foreign direct investment that is binding on the date of enactment of this Act has been made directly or indirectly by any United States person.

(4) Whenever the international obligations of the United States and actions taken under paragraph (2) make compensation necessary or appropriate, compensation may be provided by the United States Trade Representative subject to the limitations and conditions contained in section 123 of the Trade Act of 1974 (19 U.S.C.

2133) for providing compensation for actions taken under section 203 of that Act.

5. Unfair Practices in Import Trade

Section 337 of Tariff Act of 1930, as amended

[19 U.S.C. 1337; P.L. 71-361, as amended by P.L. 85-686, P.L. 93-618, P.L. 96-39, P.L. 96-417, and P.L. 97-164]

SEC. 337. UNFAIR PRACTICES IN IMPORT TRADE.

(a) UNFAIR METHODS OF COMPETITION DECLARED UNLAWFUL.—Unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sales by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to provent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States, are declared unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provisions of law, as provided in this section.

(b) INVESTIGATIONS OF VIOLATIONS BY COMMISSION; TIME LIMITS.—(1) The Commission shall investigate any alleged violation of this section on complaint under oath or upon its initiative. Upon commencing any such investigation, the Commission shall publish notice thereof in the Federal Register. The Commission shall conclude any such investigation, and make its determination under this section, at the earliest practicable time, but not later than one year (18 months in more complicated cases) after the date of publication of notice of such investigation. The Commission shall publish in the Federal Register its reasons for designating any investigation as a more complicated investigation. For purposes of the one-year and 18-month period prescribed by this subsection, there shall be excluded any period of time during whch such investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.

(2) During the course of each investigation under this section, the Commission shall consult with and seek advice and information from, the Department of Health, Education, and Welfare, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as it considers appropriate.

(3) Whenever, in the course of an investigation, under this section, the Commission has reason to believe, based on information before it, that a matter, in whole or in part, may come within the purview of section 303 or of subtitle B of title VII of the Tariff Act of 1930, it shall promptly notify the Secretary of the Treasury so that such action may be taken as is otherwise authorized by such section and such Act. If the Commission has reason to believe the matter before it is based solely on alleged acts and effects which are within the purview of section 303, 701, or 731 of this Act, it shall terminate, or not institute, any investigation into the matter. If the Commission has reason to believe the matter before it is based in part on alleged acts and effects which are within the purview of section 303, 701, or 731 of this Act, and in part on alleged

acts and effects which may, independently from or in conjunction with those within the purview of such section, establish a basis for relief under this section, then it may institute or continue an investigation into the matter. If the Commission notifies the Secretary or the administering authority (as defined in section 771(1) of this Act) with respect to a matter under this paragraph, the Commission may suspend its investigation during the time the matter is before the Secretary or administering authority for final decision. For purposes of computing the 1-year or 18-month periods prescribed by this subsection, there shall be excluded such period of suspension. Any final decision of the Secretary under section 303 of this Act or by the administering authority under section 701 or 731 of this Act with respect to the matter within such section 303, 701, or 731 of which the Commission has notified the Secretary or administering authority shall be conclusive upon the Commission with respect to the issue of less-than-fair-value sales or subsidization and the matters necessary for such decision.

(c) DETERMINATIONS; REVIEW.—The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation of this section. Each determination under subsection (d) or (e) shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter 5 of title 5, United States Code. All legal and equitable defenses may be presented in all cases. Any person adversely affected by a final determination of the Commission under subsection (d), (e), or (f) mav appeal such determination to the United States Court of Appeals for the Federal Circuit for review in accordance with chapter 7 of Title 5. Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsections (d), (e), and (f) of this section with respect to its findings on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 of Title 5.

(d) EXCLUSION OF ARTICLES FROM ENTRY.—If the Commission determines, as a result of an investigation under this section, that there is violation of this section, it shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy. the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse entry.

(e) EXCLUSION OF ARTICLES FROM ENTRY DURING INVESTIGATION EXCEPT UNDER BOND.—If, during the course of an investigation under this section, the Commission determines that there is reason to believe that there is a violation of this section, it may direct that the articles concerned, imported by any person with respect to whom there is reason to believe that such person is violating this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry, except that such articles shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary.

(f) **Cease and Desist Orders.**—(1) In lieu of taking action under subsection (d) or (e), the Commission may issue and cause to be served on any person violating this section, or believed to be violating this section, as the case may be, an order directing such person to cease and desist from engaging in the unfair methods or acts involved, unless after considering the effect of such order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such order should not be issued. The Commission may at any time, upon such notice and in such manner as it deems proper, modify or revoke any such order, and, in the case of a revocation, may take action under subsection (d) or (e), as the case may be.

(2) Any person who violates an order issued by the Commission under paragraph (1) after it has become final shall forfeit and pay to the United States a civil penalty for each day on which an importation of articles, or their sale, occurs in violation of the order of not more than the greater of $10,000 or the domestic value of the articles entered or sold on such day in violation of the order. Such penalty shall accrue to the United States and may be recovered for the United States in a civil action brought by the Commission in the Federal District Court for the District of Columbia or for the district in which the violation occurs. In such actions, the United States district courts may issue mandatory injunctions incorporating the relief sought by the Commission as they deem appropriate in the enforcement of such final orders of the Commission.

(g) **Referral to the President.**—(1) If the Commission determines that there is a violation of this section, or that, for purposes of subsection (e), there is reason to believe that there is such a violation, it shall—

(A) publish such determination in the Federal Register, and

(B) transmit to the President a copy of such determination and the action taken under subsection (d), (e), or (f), with respect thereto, together with the record upon which such determination is based.

(2) If, before the close of the 60-day period beginning on the day after the day on which he receives a copy of such determination, the President, for policy reasons, disapproves such determination and notifies the Commission of his disapproval, then, effective on the date of such notice, such determination and the action taken

under subsection (d), (e), or (f) with respect thereto shall have no force or effect.

(3) Subject to the provisions of paragraph (2), such determination shall, except for purposes of subsection (c), be effective upon publication thereof in the Federal Register, and the action taken under subsection (d), (e), or (f) with respect thereto shall be effective as provided in such subsections, except that articles directed to be excluded from entry under subsection (d) or subject to a cease and desist order under subsection (f) shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary until such determination becomes final.

(4) If the President does not disapprove such determination within such 60-day period, or if he notifies the Commission before the close of such period that he approves such determination, then, for purposes of paragraph (3) and subsection (c) such determination shall become final on the day after the close of such period or the day on which the President notifies the Commission of his approval, as the case may be.

(h) PERIOD OF EFFECTIVENESS.—Except as provided in subsections (f) and (g), any exclusion from entry or order under this section shall continue in effect until the Commission finds, and in the case of exclusion from entry notifies the Secretary of the Treasury, that the conditions which led to such exclusion from entry or order no longer exist.

(i) IMPORTATIONS BY OR FOR THE UNITED STATES.—Any exclusion from entry or order under subsection (d), (e), or (f), in cases based on claims of United States letters patent, shall not apply to any articles imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government. Whenever any article would have been excluded from entry or would not have been entered pursuant to the provisions of such subsections but for the operation of this subsection, a patent owner adversely affected shall be entitled to reasonable and entire compensation in an action before the United States Claims Court pursuant to the procedures of section 1498 of title 28, United States Code.

(j) DEFINITION OF UNITED STATES.—For purposes of this section and sections 338 and 340, the term "United States" means the customs territory of the United States as defined in general headnote 2 of the Tariff Schedules of the United States.

B. FAIR TRADE LAWS

1. Relief From Injury Caused by Import Competition

Sections 201-203 of the Trade Act of 1974, as amended

[19 U.S.C. 2251; P.L. 93-618, as amended by P.L. 96-39, Reorganization Plan No. 3 of 1979, and P.L. 98-573]

SEC. 201. INVESTIGATION BY INTERNATIONAL TRADE COMMISSION.

(a)(1) A petition for eligibility for import relief for the purpose of facilitating orderly adjustment to import competition may be filed with the International Trade Commission (hereinafter in this chapter referred to as the "Commission") by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.[1] The petition shall include a statement describing the specific purposes for which import relief is being sought, which may include such objectives as facilitating the orderly transfer of resources to alternative uses and other means of adjustment to new conditions of competition.

(2) Whenever a petition is filed under this subsection, the Commission shall transmit a copy thereof to the United States Trade Representative and the agencies directly concerned.

(b)(1) Upon the request of the President or the United States Trade Representative, upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, upon its own motion, or upon the filing of a petition under subsection (a)(1), the Commission shall promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

(2) In making its determinations under paragraph (1), the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

(A) with respect to serious injury, the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment within the industry;

(B) with respect to threat of serious injury, a decline in sales, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment

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[1] So provided in section 214(f) of P.L. 98-67 (Caribbean Basin Economic Recovery Act), the term "industry" shall include producers located in the U.S. insular possessions.

(or increasing underemployment) in the domestic industry concerned;

(C) with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers; and

(D) the presence or absence of any factor which the Commission is required to evaluate in subparagraphs (A) and (B) shall not necessarily be dispositive of whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury or threat of serious injury to the domestic industry.

(3) For purposes of paragraph (1), in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission—

(A) may, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production,

(B) may, in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article, and

(C) may, in the case of one or more domestic producers, who produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

(4) For purposes of this section, the term "substantial cause" means a cause which is important and not less than any other cause.

(5) In the course of any proceeding under this subsection, the Commission shall, for the purpose of assisting the President in making his determinations under sections 202 and 203, investigate and report on efforts made by firms and workers in the industry to compete more effectively with imports.

(6) In the course of any proceeding under this subsection, the Commission shall investigate any factors which in its judgment may be contributing to increased imports of the article under investigation; and, whenever in the course of its investigation the Commission has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of subtitles A and B of title VII or section 337 of the Tariff Act of 1930, or other remedial provisions of law, the Commission shall promptly notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law.

(7) For purposes of this section, the term "significant idling of productive facilities" includes the closing of plants or the underutilization of production capacity.

(c) In the course of any proceeding under subsection (b), the Commission shall, after reasonable notice, hold public hearings and shall afford interested parties an opportunity to be present, to present evidence, and to be heard at such hearings.

(d)(1) The Commission shall report to the President its findings under subsection (b), and the basis therefor and shall include in each report any dissenting or separate views. If the Commission finds with respect to any article, as a result of its investigation, the serious injury or threat thereof described in subsection (b), it shall—

(A) find the amount of the increase in, or imposition of, any duty or import restriction on such article which is necessary to prevent or remedy such injury, or

(B) if it determines that adjustment assistance under chapters 2, 3, and 4 can effectively remedy such injury, recommend the provision of such assistance,

and shall include such findings or recommendation in its report to the President. The Commission shall furnish to the President a transcript of the hearings and any briefs which were submitted in connection with each investigation.

(2) The report of the Commission of its determination under subsection (b) shall be made at the earliest practicable time, but not later than 6 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the President, the Commission shall also promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(e) Except for good cause determined by the Commission to exist, no investigation for the purposes of this section shall be made with respect to the same subject matter as a previous investigation under this section, unless 1 year has elapsed since the Commission made its report to the President of the results of such previous investigation.

(f)(1) Any investigation by the Commission under section 301(b) of the Trade Expansion Act of 1962 (as in effect before the date of the enactment of this Act) which is in progress immediately before such date of enactment shall be continued under this section in the same manner as if the investigation had been instituted originally under the provisions of this section. For purposes of subsection (d)(2), the petition for any investigation to which the preceding sentence applies shall be treated as having been filed, or the request or resolution as having been received or the motion having been adopted, as the case may be, on the date of the enactment of this Act.

(2) If, on the date of the enactment of this Act, the President has not taken any action with respect to any report of the Commission containing an affirmative determination resulting from an investigation under section 301(b) of the Trade Expansion Act of 1962 (as in effect before the date of the enactment of this Act), such report shall be treated by the President as a report received by him under this section on the date of the enactment of this Act.

SEC. 202. PRESIDENTIAL ACTION AFTER INVESTIGATIONS.

(a) After receiving a report from the Commission containing an affirmative finding under section 201(b) that increased imports have been a substantial cause of serious injury or the threat thereof with respect to an industry, the President—

(1)(A) shall provide import relief for such industry pursuant to section 203, unless he determines that provision of such relief is not in the national economic interest of the United States, and

(B) shall evaluate the extent to which adjustment assistance has been made available (or can be made available) under chapters 2, 3, and 4 of this title to the workers and firms in such industry and to the communities in which such workers and firms are located, and, after such evaluation, may direct the Secretary of Labor and the Secretary of Commerce that expeditious consideration be given to the petitions for adjustment assistance; or

(2) if the Commission, under section 201(d), recommends the provision of adjustment assistance, shall direct the Secretaries of Labor and Commerce as described in paragraph (1)(B).

(b) Within 60 days (30 days in the case of a supplemental report under subsection (d)) after receiving a report from the Commission containing an affirmative finding under section 201(b) (or a finding under section 201(b) which he considers to be an affirmative finding, by reason of section 330(d) of the Tariff Act of 1930, within such 60-day (or 30-day) period), the President shall—

(1) determine what method and amount of import relief he will provide, or determine that the provision of such relief is not in the national economic interest of the United States, and whether he will direct expeditious consideration of adjustment assistance petitions, and publish in the Federal Register that he has made such determination; or

(2) if such report recommends the provision of adjustment assistance, publish in the Federal Register his order to the Secretary of Labor and Secretary of Commerce for expeditious consideration of petitions.

(c) In determining whether to provide import relief and what method and amount of import relief he will provide pursuant to section 203, the President shall take into account, in addition to such other considerations as he may deem relevant—

(1) information and advice from the Secretary of Labor on the extent to which workers in the industry have applied for, are receiving, or are likely to receive adjustment assistance under chapter 2 or benefits from other manpower programs;

(2) information and advice from the Secretary of Commerce on the extent to which firms in the industry have applied for, are receiving, or are likely to receive adjustment assistance under chapters 3 and 4;

(3) the probable effectiveness of import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition, and other considerations relative to the position of the industry in the Nation's economy;

(4) the effect of import relief on consumers (including the price and availability of the imported article and the like or directly competitive article produced in the United States) and on competition in the domestic markets for such articles;

(5) the effect of import relief on the international economic interests of the United States;

(6) the impact on United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may result from international obligations with respect to compensation;

(7) the geographic concentration of imported products marketed in the United States;

(8) the extent to which the United States market is the focal point for exports of such article by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(9) the economic and social costs which would be incurred by taxpayers, communities, and workers, if import relief were or were not provided.

(d) The President may, within 15 days after the date on which he receives an affirmative finding of the Commission under section 201(b) with respect to an industry, request additional information from the Commission. The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives the President's request, furnish additional information with respect to such industry in a supplemental report.

SEC. 203. IMPORT RELIEF.

(a) If the President determines to provide import relief under section 202(a)(1), he shall to the extent that and for such time (not to exceed 5 years) as he determines necessary taking into account the considerations specified in section 202(c) to prevent or remedy serious injury or the threat thereof to the industry in question and to facilitate the orderly adjustment to new competitive conditions by the industry in question—

(1) proclaim an increase in, or imposition of, any duty on the article causing or threatening to cause serious injury to such industry;

(2) proclaim a tariff-rate quota on such article;

(3) proclaim a modification of, or imposition of, any quantitative restriction on the import into the United States of such article;

(4) negotiate, conclude, and carry out orderly marketing agreements with foreign countries limiting the export from foreign countries and the import into the United States of such articles; or

(5) take any combination of such actions.

(b)(1) On the day the President determines under section 202 to provide import relief, including announcement of his intention to negotiate an orderly marketing agreement, the President shall transmit to Congress a document setting forth the action he is taking under this section. If the action taken by the President differs from the action recommended to him by the Commission under section 201(d)(1)(A), he shall state the reason for such difference.

(2) On the day on which the President determines that the provision of import relief is not in the national economic interest of the United States, the President shall transmit to Congress a document setting forth such determination and the reasons why, in terms of the national economic interest, he is not providing import relief and also what other steps he is taking, beyond adjustment assistance programs immediately available to help the industry to overcome serious injury and the workers to find productive employment.

(3) On the day on which the President proclaims any import relief under this section not reported pursuant to paragraph (1), he shall transmit to Congress a document setting forth the action he is taking and the reasons therefor.

(c)(1) If the President reports under subsection (b) that he is taking action which differs from the action recommended by the Commission under section 201(d)(1)(A), or that he will not provide import relief, the action recommended by the Commission shall take effect (as provided in paragraph (2)) upon enactment of a joint resolution described in section 152(a)(1)(A) within the 90-day period beginning on the date on which the document referred to in subsection (b) is transmitted to the Congress.

(2) If the contingency set forth in paragraph (1) occurs, the President shall (within 30 days after the enactment of the joint resolution referred to in paragraph (1)) proclaim the increase in, or imposition of, any duty or other import restriction on the article which was recommended by the Commission under section 201(d).

(d)(1) No proclamation pursuant to subsection (a) or (c) shall be made increasing a rate of duty to (or imposing) a rate which is more than 50 percent ad valorem above the rate (if any) existing at the time of the proclamation.

(2) Any quantitative restriction proclaimed pursuant to subsection (a) or (c) and any orderly marketing agreement negotiated pursuant to subsection (a) shall permit the importation of a quantity or value of the article which is not less than the quantity or value of such article imported into the United States during the most recent period which the President determines is representative of imports of such article.

(e)(1) Import relief under this section shall be proclaimed and take effect within 15 days after the import relief determination date unless the President announces on such date his intention to negotiate one or more orderly marketing agreements under subsection (a) (4) or (5) in which case import relief shall be proclaimed and take effect within 90 days after the import relief determination date.

(2) If the President provides import relief under subsection (a) (1), (2), (3), or (5), he may, after such relief takes effect, negotiate orderly marketing agreements with foreign countries, and may, after such agreements take effect, suspend or terminate, in whole or in part, such import relief.

(3) If the President negotiates an orderly marketing agreement under subsection (a) (4) or (5) and such agreement does not continue to be effective, he may, consistent with the limitations contained in subsection (h), provide import relief under subsection (a).

(4) For purposes of this subsection, the term "import relief determination date" means the date of the President's determination under section 202(b).

(f)(1) For purposes of subsections (a) and (c), the suspension of item 806.30 or 807.00 of the Tariff Schedules of the United States with respect to an article shall be treated as an increase in duty.

(2) For purposes of subsections (a) and (c), the suspension of the designation of any article as an eligible article for purposes of title V shall be treated as an increase in duty.

(3) No proclamation providing for a suspension referred to in paragraph (1) with respect to any article shall be made under subsection (a) or (c) unless the Commission, in addition to making an affirmative determination with respect to such article under section 201(b), determines in the course of its investigation under section 201(b) that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the application of item 806.30 or item 807.00.

(4) No proclamation which provides solely for a suspension referred to in paragraph (2) with respect to any article shall be made under subsection (a) or (c) unless the Commission, in addition to making an affirmative determination with respect to such article under section 201(b), determines in the course of its investigation under section 201(b) that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the designation of the article as an eligible article for the purposes of title V.

(g)(1) The President shall by regulations provide for the efficient and fair administration of any restriction proclaimed pursuant to this section.

(2) In order to carry out an agreement concluded under subsection (a)(4), (a)(5), (e)(2), or (e)(3), the President is authorized to prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out any agreement concluded under subsection (a)(4), (a)(5), (e)(2), or (e)(3) with one or more countries accounting for a major part of United States imports of the article covered by such agreements, including imports into a major geographic area of the United States, the President is authorized to issue regulations governing the entry or withdrawal from warehouse of like articles which are the product of countries not parties to such agreement.

(3) Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

(h)(1) Any import relief provided pursuant to this section shall, unless renewed pursuant to paragraph (3), terminate no later than the close of the day which is 5 years after the day on which import relief with respect to the article in question first took effect pursuant to this section.

(2) To the extent feasible, any import relief provided pursuant to this section for a period of more than 3 years shall be phased down during the period of such relief, with the first reduction of relief

taking effect no later than the close of the day which is 3 years after the day on which such relief first took effect.

(3) Any import relief provided pursuant to this section or section 351 or 352 of the Trade Expansion Act of 1962 may be extended by the President, at a level of relief no greater than the level in effect immediately before such extension, for one period of not more than 3 years if the President determines, after taking into account the advice received from the Commission under subsection (i)(2) or (i)(3) and after taking into account the considerations described in section 202(c), that such extension is in the national interest.

(4) Any import relief provided pursuant to this section may be reduced or terminated by the President when he determines, after taking into account the advice received from the Commission under subsection (i)(2) or (i)(3) and after seeking advice of the Secretary of Commerce and the Secretary of Labor, that such reduction or termination is in the national interest.

(5) For purposes of this subsection and subsection (i), the import relief provided in the case of an orderly marketing agreement shall be the level of relief contemplated by such agreement.

(i)(1) So long as any import relief provided pursuant to this section or section 351 or 352 of the Trade Expansion Act of 1962 remains in effect, the Commission shall keep under review developments with respect to the industry concerned (including the progress and specific efforts made by the firms in the industry concerned to adjust to import competition) and upon request of the President shall make reports to the President concerning such developments.

(2) Upon request of the President or upon its own motion, the Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of the extension, reduction, or termination of the import relief provided pursuant to this section.

(3) Upon petition on behalf of the industry concerned, filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any import relief provided pursuant to this section or section 351 or 352 of the Trade Expansion Act of 1962 is to terminate by reason of the expiration of the initial period therefor, the Commission shall advise the President of its judgment as to the probable economic effect on such industry of such termination.

(4) In advising the President under paragraph (2) or (3) as to the probable economic effect on the industry concerned, the Commission shall take into account all economic factors which it considers relevant, including the considerations set forth in section 202(c) and the progress and specific efforts made by the industry concerned to adjust to import competition.

(5) Advice by the Commission under paragraph (2) or (3) shall be given on the basis of an investigation during the course of which the Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(j) No investigation for the purposes of section 201 shall be made with respect to an article which has received import relief under this section unless 2 years have elapsed since the last day on which import relief was provided with respect to such article pursuant to this section.

(k)(1) Actions by the President pursuant to this section may be taken without regard to the provisions of section 126(a) of this Act but only after consideration of the relation of such actions to the international obligations of the United States.

(2) If the Commission treats as the domestic industry production located in a major geographic area of the United States under section 201(b)(3)(C), then the President shall take into account the geographic concentration of domestic production and of imports in that area in providing import relief, if any, which may include actions authorized under paragraph (1).

2. Relief From Market Disruption by Imports From Communist Countries

Section 406 of Trade Act of 1974, as amended

[19 U.S.C. 2436; P.L. 93-618, as amended by Reorganization Plan No. 3 of 1979]

SEC. 406. MARKET DISRUPTION.

(a)(1) Upon the filing of a petition by an entity described in section 201(a)(1), upon request of the President or the United States Trade Representative, upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the International Trade Commission (hereafter in this section referred to as the "Commission") shall promptly make an investigation to determine, with respect to imports of an article which is the product of a Communist country, whether market disruption exists with respect to an article produced by a domestic industry.

(2) The provisions of subsections (a) (2), (b) (3), and (c) of section 201 shall apply with respect to investigations by the Commission under paragaph (1).

(3) The Commission shall report to the President its determination with respect to each investigation under paragraph (1) and the basis therefor and shall include in each report any dissenting or separate views. If the Commission finds, as a result of its investigation, that market disruption exists with respect to an article produced by a domestic industry, it shall find the amount of the increase in, or imposition of, any duty or other import restriction on such article which is necessary to prevent or remedy such market disruption and shall include such finding in its report to the President. The Commission shall furnish to the President a transcript of the hearings and any briefs which may have been submitted in connection with each investigation.

(4) The report of the Commission of its determination with respect to an investigation under paragraph (1) shall be made at the earliest practicable time, but not later than 3 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the President, the Commission shall also promptly make public such report (with the exception of information which the Commission determines to be confidential)

and shall cause a summary thereof to be published in the Federal Register.

(b) For purposes of sections 202 and 203, an affirmative determination of the Commission under subsection (a) shall be treated as an affirmative determination under section 201 (b), except that—

(1) the President may take action under sections 202 and 203 only with respect to imports from the country or countries involved of the article with respect to which the affirmative determination was made, and

(2) if such action consists of, or includes, an orderly marketing agreement, such agreement shall be entered into within 60 days after the import relief determination date.

(c) If, at any time, the President finds that there are reasonable grounds to believe, with respect to imports of an article which is the product of a Communist country, that market disruption exists with respect to an article produced by a domestic industry, he shall request the Commission to initiate an investigation under subsection (a). If the President further finds that emergency action is necessary, he may take action under sections 202 and 203 as if an affirmative determination of the Commission had been made under subsection (a). Any action taken by the President under the preceding sentence shall cease to apply (1) if a negative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the Commission's report of such determination is submitted to the President, or (2) if an affirmative determination is made by the Commission under subsection (2) with respect to imports of such article, on the day on which the action taken by the President pursuant to such determination becomes effective.

(d)(1) A petition may be filed with the President by an entity described in section 201(a)(1) requesting the President to initiate consultations provided for by the safeguard arrangements of any agreement entered into under section 405 with respect to imports of an article which is the product of the country which is the other party to such agreement.

(2) If the President determines that there are reasonable grounds to believe, with respect to imports of such article, that market disruption exists with respect to an article produced by a domestic industry, he shall initiate consultations with such country with respect to such imports.

(e) For purposes of this section—

(1) The term "Communist country" means any country dominated or controlled by communism.

(2) Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

3. Authority to Auction Import Licenses

Section 1102 of Trade Agreements Act of 1979

[19 U.S.C. 2581, P.L. 96-39]

SEC. 1102. AUCTION OF IMPORT LICENSES.

(a) IN GENERAL.—Notwithstanding any other provision of law, the President may sell import licenses at public auction under such terms and conditions as he deems appropriate. Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

(b) DEFINITION OF IMPORT LICENSE.—For purposes of this section, the term "import license" means any documentation used to administer a quantitative restriction imposed or modified after the date of enactment of this Act under—

(1) section 125, 203, 301, or 406 of the Trade Act of 1974 (19 U.S.C. 2135, 2253, 2411, or 2436),

(2) the International Emergency Economic Powers Act (50 U.S.C. App. 1701-1706),

(3) authority under the headnotes of the Tariff Schedules of the United States, but not including any quantitative restriction imposed under section 22 of the Agriculture Adjustment Act of 1934 (7 U.S.C. 624),

(4) the Trading With the Enemy Act (50 U.S.C. App. 1-44),

(5) section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854) other than for meat or meat products, or

(6) any Act enacted explicitly for the purpose of implementing an international agreement to which the United States is a party, including such agreements relating to commodities, but not including any agreement relating to cheese or dairy products.

C. TRADE ADJUSTMENT ASSISTANCE

Title II, chapters 2, 3, and 5 of Trade Act of 1974, as amended

[19 U.S.C. 2271; P.L. 93-618, as amended by P.L. 96-417, P.L. 97-35, P.L. 98-120, P.L. 98-369, and P.L. 99-272]

CHAPTER 2—ADJUSTMENT ASSISTANCE FOR WORKERS

Subchapter A—Petitions and Determinations

SEC. 221. PETITIONS.

(a) A petition for certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary of Labor (hereinafter in this chapter referred to as the "Secretary") by a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) or by their certified or recognized union or other duly authorized representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

(b) If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under subsection (a) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.

The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this chapter if he determines—

(1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important, but not necessarily more important than any other cause.

SEC. 223. DETERMINATIONS BY SECRETARY OF LABOR.

(a) As soon as possible after the date on which a petition is filed under section 221, but in any event not later than 60 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 222 and shall issue a certification of eligibility to apply for assistance under this chapter covering workers in any group which meets such requirements. Each certification shall specify the date on which the total or partial separation began or threatened to begin.

(b) A certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm before his application under section 231 occurred—

(1) more than one year before the date of the petition on which such certification was granted, or

(2) more than 6 months before the effective date of this chapter.

(c) Upon reaching his determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register together with his reasons for making such determination.

(d) Whenever the Secretary determines, with respect to any certification of eligibility of the workers of a firm or subdivision of the firm, that total or partial separations from such firm or subdivision are no longer attributable to the conditions specified in section 222, he shall terminate such certification and promptly have notice of such termination published in the Federal Register together with his reasons for making such determination. Such termination shall apply only with respect to total or partial separations occurring after the termination date specified by the Secretary.

SEC. 224. STUDY BY SECRETARY OF LABOR WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION.

(a) Whenever the International Trade Commission (hereafter referred to in this chapter as the "Commission") begins an investigation under section 201 with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of workers in the domestic industry producing the like or directly competitive article who have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the adjustment of such workers to the import competition may be facilitated through the use of existing programs.

(b) The report of the Secretary of the study under subsection (a) shall be made to the President not later than 15 days after the day on which the Commission makes its report under section 201. Upon making his report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

SEC. 225. BENEFIT INFORMATION TO WORKERS.

The Secretary shall provide full information to workers about the benefit allowances, training, and other employment services available under this chapter and about the petition and application procedures, and the appropriate filing dates, for such allowances, training and services. The Secretary shall provide whatever assistance is necessary to enable groups of workers to prepare petitions or applications for program benefits. The Secretary shall make every effort to insure that cooperating State agencies fully comply with the agreements entered into under section 239(a) and shall periodically review such compliance. The Secretary shall inform the State Board for Vocational Education or equivalent agency and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under section 223 and of projections, if available, of the needs for training under section 236 as a result of such certification.

Subchapter B—Program Benefits

PART I—TRADE READJUSTMENT ALLOWANCES

SEC. 231. QUALIFYING REQUIREMENTS FOR WORKERS.

(a) Payment of a trade readjustment allowance shall be made to an adversely affected worker covered by a certification under subchapter A who files an application for such allowance for any week of unemployment which begins more than 60 days after the date on which the petition that resulted in such certification was filed under section 221, if the following conditions are met:

(1) Such worker's total or partial separation before his application under this chapter occurred—

(A) on or after the date, as specified in the certification under which he is covered, on which total or partial separation began or threatened to begin in the adversely affected employment,

(B) before the expiration of the 2-year period beginning on the date on which the determination under section 223 was made, and

(C) before the termination date (if any) determined pursuant to section 223(d).

(2) Such worker had, in the 52-week period ending with the week in which such total or partial separation occurred, at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm, or, if data with respect to weeks of employment with a firm are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary. For the purposes of this paragraph, any week in which such worker—

(A) is on employer-authorized leave for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training,

(B) does not work because of a disability that is compensable under a workmen's compensation law or plan of a State or the United States, or

(C) had his employment interrupted in order to serve as a full-time representative of a labor organization in such firm or subdivision,

shall be treated as a week of employment at wages of $30 or more, but not more than 7 weeks, in case of weeks described in paragraph (A) or (C), or both, may be treated as weeks of employment under this sentence.

(3) Such worker—

(A) was entitled to (or would be entitled to if he applied therefor) unemployment insurance for a week within the benefit period (i) in which such total or partial separation took place, or (ii) which began (or would have begun) by reason of the filing of a claim for unemployment insurance by such worker after such total or partial separation;

(B) has exhausted all rights to any unemployment insurance to which he was entitled (or would be entitled if he applied therefor); and

(C) does not have an unexpired waiting period applicable to him for any such unemployment insurance.

(4) Such worker, with respect to such week of unemployment, would not be disqualified for extended compensation payable under the Federal-State Extended Unemployment Compensation Act of 1970 by reason of the work acceptance and job search requirements in section 202(a)(3) of such Act.

(5) Such worker, unless the Secretary has determined that no acceptable job search program is reasonably available—

(A) is enrolled in a job search program approved by the Secretary under section 237(c), or

(B) has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a job search program approved by the Secretary under section 237(c).

(b) If the Secretary determines with respect to any labor market area that—

(1) a high level of unemployment exists,

(2) suitable employment opportunities are not available, and

(3) there are facilities available for the provision of training under section 236 in new or related job classifications,

the Secretary may, in accordance with such regulations as he shall prescribe, require all adversely affected workers who were totally or partially separated in such area and for whom such training is approved under section 236—

(A) to accept such training, or

(B) to search actively for work outside such area,

whichever the worker may choose; except that no worker may be required (i) to accept training or undertake a job search under this subsection until after the first 8 weeks of his eligibility for trade readjustment allowances has expired, or (ii) to accept, or to participate in, such training for a period longer than the remaining period to which he is entitled to such allowances. For purposes of this subsection, the term "labor market area" has the same meaning as is given such term in the Introduction to the Directory of Important Labor Areas, 1980 edition, published by the Department of Labor; except that for any portion of any State which is not included within that term in such Introduction, the county or counties in which that portion is located shall be treated as the applicable labor market area.

(c) If the Secretary determines that—

(1) the adversely affected worker—

(A) has failed to begin participation in the job search program the enrollment in which meets the requirement of subsection (a)(5), or

(B) has ceased to participate in such job search program before completing such job search program, and

(2) there is no justifiable cause for such failure or cessation,

no trade readjustment allowance may be paid to the adversely affected worker under this part on or after the date of such determination until the adversely affected worker begins or resumes participation in a job search program approved under section 237(c).

SEC. 232. WEEKLY AMOUNTS.

(a) Subject to subsections (b) and (c), the trade readjustment allowance payable to an adversely affected worker for a week of total unemployment shall be an amount equal to the most recent weekly benefit amount of the unemployment insurance payable to the worker for a week of total unemployment preceding the worker's first exhaustion of unemployment insurance (as determined for purposes of section 231(a)(3)(B)) reduced (but not below zero) by—

(1) any training allowance deductible under subsection (c); and

(2) income that is deductible from unemployment insurance under the disqualifying income provisions of the applicable State law or Federal unemployment insurance law.

(b) Any adversely affected worker who is entitled to trade readjustment allowances and who is undergoing training approved by the Secretary, including on-the-job training, shall receive for each week in which he is undergoing any such training, a trade readjustment allowance in an amount (computed for such week) equal to the amount computed under subsection (a) or (if greater) the amount of any weekly allowance for such training to which he would be entitled under any other Federal law for the training of workers, if he applied for such allowance. Such trade readjustment allowance shall be paid in lieu of any training allowance to which the worker would be entitled under such other Federal law.

(c) If a training allowance under any Federal law other than this Act, is paid to an adversely affected worker for any week of unemployment with respect to which he would be entitled (determined without regard to any disqualification under section 231(c) or 236(c)) to a trade readjustment allowance if he applied for such allowance, each such week shall be deducted from the total number of weeks of trade readjustment allowance otherwise payable to him under section 233(a) when he applies for a trade readjustment allowance and is determined to be entitled to such allowance. If such training allowance paid to such worker for any week of unemployment is less than the amount of the trade readjustment allowance to which he would be entitled if he applied for such allowance, he shall receive, when he applies for a trade readjustment allowance and is determined to be entitled to such allowance, a trade readjustment allowance for such week equal to such difference.

SEC. 233. LIMITATIONS ON TRADE READJUSTMENT ALLOWANCES.

(a)(1) The maximum amount of trade readjustment allowances payable with respect to the period covered by any certification to an adversely affected worker shall be the amount which is the product of 52 multiplied by the trade readjustment allowance payable to the worker for a week of total unemployment (as determined under section 232(a)), but such product shall be reduced by the total sum of the unemployment insurance to which the worker was entitled (or would have been entitled if he had applied therefor) in the worker's first benefit period described in section 231(a)(3)(A).

(2) A trade readjustment allowance shall not be paid for any week after the 104-week period beginning with the first week following the first week in the period covered by the certification with respect to which the worker has exhausted (as determined for purposes of section 231(a)(3)(B)) all rights to that part of his unemployment insurance that is regular compensation.

(3) Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete training approved for him under section 236, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that—

(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this chapter; or

(B) begins with the first week of such training, if such training is approved after the last week described in subparagraph (A).

Payments for such additional weeks may be made only for weeks in such 26-week period during which the individual is engaged in such training and has not been determined under section 236(c) to be failing to make satisfactory progress in the training.

(b) A trade readjustment allowance may not be paid for an additional week specified in subsection (a)(3) if the adversely affected worker who would receive such allowance did not make a bona fide application to a training program approved by the Secretary under section 236 within 210 days after the date of the worker's first certification of eligibility to apply for adjustment assistance issued by the Secretary, or, if later, within 210 days after the date of the worker's total or partial separation referred to in section 231(a)(1).

(c) Amounts payable to an adversely affected worker under this part shall be subject to such adjustment on a week-to-week basis as may be required by section 232(b).

(d) Notwithstanding any other provision of this Act or other Federal law, if the benefit year of a worker ends within an extended benefit period, the number of weeks of extended benefits that such worker would, but for this subsection, be entitled to in that extended benefit period shall be reduced (but not below zero) by the number of weeks for which the worker was entitled, during such benefit year, to trade readjustment allowances under this part. For purposes of this paragraph, the terms "benefit year" and "extended benefit period" shall have the same respective meanings given to them in the Federal-State Extended Unemployment Compensation Act of 1970.

(e) No trade readjustment allowance shall be paid to a worker under this part for any week during which the worker is receiving on-the-job training.

SEC. 234. APPLICATION OF STATE LAWS.

Except where inconsistent with the provisions of this chapter and subject to such regulations as the Secretary may prescribe, the availability and disqualification provisions of the State law—

(1) under which an adversely affected worker is entitled to unemployment insurance (whether or not he has filed a claim for such insurance), or

(2) if he is not so entitled to unemployment insurance, of the State in which he was totally or partially separated,

shall apply to any such worker who files a claim for trade readjustment allowances. The State law so determined with respect to a separation of a worker shall remain applicable, for purposes of the preceding sentence, with respect to such separation until such worker becomes entitled to unemployment insurance under another State law (whether or not he has filed a claim for such insurance).

PART II—TRAINING, OTHER EMPLOYMENT SERVICES, AND ALLOWANCES

SEC. 235. EMPLOYMENT SERVICES.

The Secretary shall make every reasonable effort to secure for adversely affected workers covered by a certification under subchapter A of this chapter counseling, testing, and placement services, and supportive and other services, provided for under any other Federal law. The Secretary shall, whenever appropriate, procure such services through agreements with cooperating State agencies.

SEC. 236. TRAINING.

(a)(1) If the Secretary determines that—

(A) there is no suitable employment (which may include technical and professional employment) available for an adversely affected worker,

(B) the worker would benefit from appropriate training,

(C) there is a reasonable expectation of employment following completion of such training,

(D) training approved by the Secretary is available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 195(2) of the Vocational Education Act of 1963, and employers), and

(E) the worker is qualified to undertake and complete such training,

the Secretary shall (to the extent appropriated funds are available) approve such training for the worker. Upon such approval, the worker shall be entitled to have payment of the costs of such training paid on his behalf by the Secretary. Insofar as possible, the Secretary shall provide or assure the provision of such training on the job, which shall include related education necessary for the acquisition of skills needed for a position within a particular occupation.

(2) For purposes of applying paragraph (1)(C), a reasonable expectation of employment does not require that employment opportunities for a worker be available, or offered, immediately upon the completion of training approved under this paragraph (1).

(3)(A) If the costs of training an adversely affected worker are paid by the Secretary under paragraph (1), no other payment for such costs may be made under any other provision of Federal law.

(B) No payment may be made under paragraph (1) of the costs of training an adversely affected worker if such costs—

(i) have already been paid under any other provision of Federal law, or

(ii) are reimbursable under any other provision of Federal law and a portion of such costs have already been paid under such other provision of Federal law.

(C) The provisions of this paragraph shall not apply to, or take into account, any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of the costs incurrred in training a particular adversely affected worker, even if such use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker.

(4) The training programs that may be approved under paragraph (1) include, but are not limited to—

(A) on-the-job training,

(B) any training program provided by a State pursuant to section 303 of the Job Training Partnership Act,

(C) any training program approved by a private industry council established under section 102 of such Act, and

(D) any other training program approved by the Secretary.

(b) The Secretary may, where appropriate, authorize supplemental assistance necessary to defray reasonable transportation and subsistence expenses for separate maintenance when training is provided in facilities which are not within commuting distance of a worker's regular place of residence. The Secretary may not authorize—

(1) payments for subsistence that exceed whichever is the lesser of (A) the actual per diem expenses for subsistence, or (B) payments at 50 percent of the prevailing per diem allowance rate authorized under the Federal travel regulations, or

(2) payments for travel expenses exceeding the prevailing mileage rate authorized under the Federal travel regulations, and

(c) Any adversely affected worker who, without good cause, refuses to accept or continue, or fails to make satisfactory progress in, suitable training to which he has been referred by the Secretary shall not thereafter be entitled to payments under this chapter until he enters or resumes the training to which he has been so referred.

(d) Notwithstanding any provision of subsection (a)(1), the Secretary may pay the costs of on-the-job training of an adversely affected worker under subsection (a)(1) only if—

(1) no currently employed worker is displaced by such adversely affected worker (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits),

(2) such training does not impair existing contracts for services or collective bargaining agreements,

(3) in the case of training which would be inconsistent with the terms of a collective bargaining agreement, the written concurrence of the labor organization concerned has been obtained,

(4) no other individual is on layoff from the same, or any substantially equivalent, job for which such adversely affected worker is being trained,

(5) the employer has not terminated the employment of any regular employee or otherwise reduced the work force of the employer with the intention of filling the vacancy so created by hiring such adversely affected worker,

(6) the job for which such adversely affected worker is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals,

(7) such training is not for the same occupation from which the worker was separated and with respect to which such worker's group was certified pursuant to section 222,

(8) the employer certifies to the Secretary that the employer will continue to employ such worker for at least 26 weeks after completion of such training if the worker desires to continue such employment and the employer does not have due cause to terminate such employment,

(9) the employer has not received payment under subsection (a)(1) with respect to any other on-the-job training provided by such employer which failed to meet the requirements of paragraphs (1), (2), (3), (4), (5), and (6), and

(10) the employer has not taken, at any time, any action which violated the terms of any certification described in paragraph (8) made by such employer with respect to any other on-the-job training provided by such employer for which the Secretary has made a payment under subsection (a)(1).

(e) A worker may not be determined to be ineligible or disqualified for unemployment insurance or program benefits under this subchapter because the individual is in training approved under subsection (a), because of leaving work which is not suitable employment to enter such training, or because of the application to any such week in training of provisions of State law or Federal unemployment insurance law relating to availability for work, active search for work, or refusal to accept work. The Secretary shall submit to the Congress a quarterly report regarding the amount of funds expended during the quarter concerned to provide training under paragraph (1) and the anticipated demand for such funds for any remaining quarters in the fiscal year concerned.

(f) For purposes of this section the term "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage.

SEC. 237. JOB SEARCH ALLOWANCES.

(a) Any adversely affected worker covered by a certification under subchapter A of this chapter may file an application with the Secretary for a job search allowance. Such allowance, if granted shall provide reimbursement to the worker of 90 percent of the cost of necessary job search expenses as prescribed by regulations of the Secretary; except that—

(1) such reimbursement may not exceed $800 for any worker, and

(2) reimbursement may not be made for subsistence and transportation expenses at levels exceeding those allowable under section 236(b)(1) and (2).

(b) A job search allowance may be granted only—

(1) to assist an adversely affected worker who has been totally separated in securing a job within the United States;

(2) where the Secretary determines that such worker cannot reasonably be expected to secure suitable employment in the commuting area in which he resides; and

(3) where the worker has filed an application for such allowance with the Secretary before—

(A) the later of—

(i) the 365th day after the date of the certification under which the worker is eligible, or

(ii) the 365th day after the date of the worker's last total separation; or

(B) the 182d day after the concluding date of any training received by the worker, if the worker was referred to such training by the Secretary.

(c) The Secretary shall reimburse any adversely affected worker for necessary expenses incurred by such worker in participating in a job search program approved by the Secretary.

SEC. 238. RELOCATION ALLOWANCES.

(a) Any adversely affected worker covered by a certification under subchapter A of this chapter may file an application with the Secretary for a relocation allowance, subject to the terms and conditions of this section, if such worker files such application before—

(1) the later of—

(A) the 425th day after the date of the certification, or

(B) the 425th day after the date of the worker's last total separation; or

(2) the 182d day after the concluding date of any training received by such worker, if the worker was referred to such training by the Secretary.

(b) A relocation allowance may be granted only to assist an adversely affected worker in relocating within the United States and only if the Secretary determines that such worker cannot reasonably be expected to secure suitable employment in the commuting area in which he resides and that such worker—

(1) has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which he wishes to relocate, or

(2) has obtained a bona fide offer of such employment, and

(3) is totally separated from employment at the time relocation commences.

(c) A relocation allowance shall not be granted to such worker unless his relocation occurs within 182 days after the filing of the application therefor or (in the case of a worker who has been referred to training by the Secretary) within 182 days after the conclusion of such training.

(d) For the purposes of this section, the term "relocation allowance" means—

(1) 90 percent of the reasonable and necessary expenses (including, but not limited to, subsistence and transportation expenses at levels not exceeding those allowable under section 236(b) (1) and (2)) specified in regulations prescribed by the Secretary, incurred in transporting a worker and his family if any, and household effects, and

(2) a lump sum equivalent to three times the worker's average weekly wage, up to a maximum payment of $800.

Subchapter C—General Provisions

SEC. 239. AGREEMENTS WITH STATES.

(a) The Secretary is authorized on behalf of the United States to enter into an agreement with any State, or with any State agency (referred to in this subchapter as "cooperating States" and "cooperating States agencies" respectively). Under such an agreement, the cooperating State agency (1) as agent of the United States, will receive applications for, and will provide, payments on the basis provided in this chapter, (2) where appropriate, but in accordance with subsection (f), will afford adversely affected workers testing, counseling, referral to training and job search programs, and placement services, (3) will make determinations and approvals regarding job search programs under sections 231(c) and 237(c), and (4) will otherwise cooperate with the Secretary and with other State and Federal agencies in providing payments and services under this chapter.

(b) Each agreement under this subchapter shall provide the terms and conditions upon which the agreement may be amended, suspended, or terminated.

(c) Each agreement under this subchapter shall provide that unemployment insurance otherwise payable to any adversely affected worker will not be denied or reduced for any week by reason of any right to payments under this chapter.

(d) A determination by a cooperating State agency with respect to entitlement to program benefits under an agreement is subject to review in the same manner and to the same extent as determinations under the applicable State law and only in that manner and to that extent.

(e) Agreements entered into under this section may be made with one or more State or local agencies including—

(1) the employment service agency of such State,

(2) any State agency carrying out title III of the Job Training Partnership Act, or

(3) any other State or local agency administering job training or related programs.

(f) Each cooperating State agency shall, in carrying out subsection (a)(2)—

(1) advise each adversely affected worker to apply for training under section 236(a) at the time the worker makes application for trade readjustment allowances (but failure of the worker to do so may not be treated as cause for denial of those allowances), and

(2) within 60 days after application for training is made by the worker, interview the adversely affected worker regarding suitable training opportunities available to the worker under section 236 and review such opportunities with the worker.

[(e) Section 3302(c) of the Internal Revenue Code of 1954 (relating to credits against Federal unemployment tax) is amended by inserting after paragraph (3) the following new paragraph:

[(4) If the Secretary of Labor determines that a State, or State agency, has not—

[(A) entered into the agreement described in section 239 of the Trade Act of 1974, with the Secretary of Labor before July 1, 1975, or

[(B) fulfilled its commitments under an agreement with the Secretary of Labor as described in section 239 of the Trade Act of 1974,

then, in the case of taxpayer subject to the unemployment compensation law of such State, the total credits (after applying subsection (a) and (b) and paragraphs (1), (2) and (3) of this section) otherwise allowable under this section for a year during which such State or agency does not enter into or fulfill such an agreement shall be reduced by 15 percent of the tax imposed with respect to wages paid by such taxpayer during such year which are attributable to such State.

SEC. 240. ADMINISTRATION ABSENT STATE AGREEMENT.

(a) In any State where there is no agreement in force between a State or its agency under section 239, the Secretary shall arrange under regulations prescribed by him for performance of all necessary functions under subchapter B of this chapter, including provision for a fair hearing for any worker whose application for payments is denied.

(b) A final determination under subsection (a) with respect to entitlement to program benefits under subchapter B of this chapter is subject to review by the courts in the same manner and to the same extent as is provided by section 205(g) of the Social Security Act (42 U.S.C. 405(g)).

SEC. 241. PAYMENTS TO STATES.

(a) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each cooperating State the sums necessary to enable such State as agent of the United States to make payments provided for by this chapter.

(b) All money paid a State under this section shall be used solely for the purposes for which it is paid; and money so paid which is not used for such purposes shall be returned, at the time specified in the agreement under this subchapter, to the Secretary of the Treasury.

(c) Any agreement under this subchapter may require any officer or employee of the State certifying payments or disbursing funds under the agreement or otherwise participating in the performance of the agreement, to give a surety bond to the United States in such amount as the Secretary may deem necessary, and may provide for the payment of the cost of such bond from funds for carrying out the purposes of this chapter.

SEC. 242. LIABILITIES OF CERTIFYING AND DISBURSING OFFICERS.

(a) No person designated by the Secretary, or designated pursuant to an agreement under this subchapter, as a certifying officer, shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment certified by him under this chapter.

(b) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this chapter if it was based upon a voucher signed by a certifying officer designated as provided in subsection (a).

SEC. 243. FRAUD AND RECOVERY OF OVERPAYMENTS.

(a)(1) If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that any person has received any payment under this chapter to which the person was not entitled, including a payment referred to in subsection (b), such person shall be liable to repay such amount to the State agency or the Secretary, as the case may be, except that the State agency or the Secretary may waive such repayment if such agency or the Secretary determines, in accordance with guidelines prescribed by the Secretary, that—

(A) the payment was made without fault on the part of such individual, and

(B) requiring such repayment would be contrary to equity and good conscience.

(2) Unless an overpayment is otherwise recovered, or waived under paragraph (1), the State agency or the Secretary shall recover the overpayment by deductions from any sums payable to such person under this chapter, under any Federal unemployment compensation law administered by the State agency or the Secretary, or under any other Federal law administered by the State agency or the Secretary which provides for the payment of assistance or an allowance with respect to unemployment, and, notwithstanding any other provision of State law or Federal law to the contrary, the Secretary may require the State agency to recover any overpayment under this chapter by deduction from any unemployment insurance payable to such person under the State law, except that no single deduction under this paragraph shall exceed 50 percent of the amount otherwise payable.

(b) If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that an individual—

(1) knowingly has made, or caused another to make, a false statement or representation of a material fact, or

(2) knowingly has failed, or caused another to fail, to disclose a material fact,

and as a result of such false statement or representation, or of such nondisclosure, such individual has received any payment under this chapter to which the individual was not entitled, such individual shall, in addition to any other penalty provided by law, be ineligible for any further payments under this chapter.

(c) Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination under subsection (a)(1) by the State agency or the Secretary, as the case may be, has been made, notice of the determination and an opportunity for a fair hearing thereon has been given to the individual concerned, and the determination has become final.

(d) Any amount recovered under this section shall be returned to the Treasury of the United States.

SEC. 244. PENALTIES.

Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other person any payment authorized to be furnished under this chapter or pursuant to an agreement under section 239 shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

SEC. 245. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of Labor, for each of the fiscal years 1986, 1987, 1988, 1989, 1990, and 1991 such sums as may be necessary to carry out the purposes of this chapter.

SEC. 247. DEFINITIONS.

For purposes of this chapter—

(1) The term "adversely affected employment" means employment in a firm or appropriate subdivision of a firm, if workers of such firm or subdivision are eligible to apply for adjustment assistance under this chapter.

(2) The term "adversely affected worker" means an individual who, because of lack of work in adversely affected employment—

(A) has been totally or partially separated from such employment, or

(B) has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists.

[(3) Repealed.]

(4) The term "average weekly wage" means one-thirteenth of the total wages paid to an individual in the high quarter. For purposes of this computation, the high quarter shall be that quarter in which the individual's total wages were highest among the first 4 of the last 5 completed calendar quarters immediately before the quarter in which occurs the week with re-

spect to which the computation is made. Such week shall be the week in which total separation occurred, or, in cases where partial separation is claimed, an appropriate week, as defined in regulations prescribed by the Secretary.

(5) The term "average weekly hours" means the average hours worked by the individual (excluding overtime) in the employment from which he has been or claims to have been separated in the 52 weeks (excluding weeks during which the individual was sick or on vacation) preceding the week specified in the last sentence of paragraph (4).

(6) The term "partial separation" means, with respect to an individual who has not been totally separated, that he has had—

(A) his hours of work reduced to 80 percent or less of his average weekly hours in adversely affected employment, and

(B) his wages reduced to 80 percent or less of his average weekly wage in such adversely affected employment.

(8) The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico: and the term "United States" when used in the geographical sense includes such Commonwealth.

(9) The term "State agency" means the agency of the State which administers the State law.

(10) The term "State law" means the unemployment insurance law of the State approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

(11) The term "total separation" means the layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists.

(12) The term "unemployment insurance" means the unemployment compensation payable to an individual under any State law or Federal unemployment compensation law, including chapter 85 of title 5, United States Code, and the Railroad Unemployment Insurance Act. The terms "regular compensation", "additional compensation", and "extended compensation" have the same respective meanings that are given them in section 205(2), (3), and (4) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note.)

(13) The term "week" means a week as defined in the applicable State law.

(14) The term "week of unemployment" means a week of total, part-total, or partial unemployment as determined under the applicable State law or Federal unemployment insurance law.

(15) The term "benefit period" means, with respect to an individual—

(A) the benefit year and any ensuing period, as determined under applicable State law, during which the individual is eligible for regular compensation, additional compensation, or extended compensation, or

(B) the equivalent to such a benefit year or ensuing period provided for under the applicable Federal unemployment insurance law.

(16) The term "on-the-job training" means training provided by an employer to an individual who is employed by the employer.

(17)(A) The term "job search program" means a job search workshop or job finding club.

(B) The term "job search workshop" means a short (1 to 3 days) seminar designed to provide participants with knowledge that will enable the participants to find jobs. Subjects are not limited to, but should include, labor market information, résumé writing, interviewing techniques, and techniques for finding job openings.

(C) The term "job finding club" means a job search workshop which includes a period (1 to 2 weeks) of structured, supervised activity in which participants attempt to obtain jobs.

SEC. 248. REGULATIONS.

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this chapter.

SEC. 249. SUBPENA POWER.

(a) The Secretary may require by subpena the attendance of witnesses and the production of evidence necessary for him to make a determination under the provisions of this chapter.

(b) If a person refuses to obey a subpena issued under subsection (a), a United States district court within the jurisdiction of which the relevant proceeding under this chapter is conducted may, upon petition by the Secretary, issue an order requiring compliance with such subpena.

CHAPTER 3—ADJUSTMENT ASSISTANCE FOR FIRMS

SEC. 251. PETITIONS AND DETERMINATIONS.

(a) A petition for a certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary of Commerce (hereinafter in this chapter referred to as the "Secretary") by a firm (including any agricultural firm) or its representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

(b) If the petitioner, or any other person, organization, or group found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under subsection (a) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

(c) The Secretary shall certify a firm (including any agricultural firm) as eligible to apply for adjustment assistance under this chapter if he determines—

(1) that a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated.

(2) that—

(A) sales or production, or both, of the firm have decreased absolutely, or

(B) sales or production, or both, of an article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by such firm contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

(d) A determination shall be made by the Secretary as soon as possible after the date on which the petition is filed under this section, but in any event not later than 60 days after that date.

SEC. 252. APPROVAL OF ADJUSTMENT PROPOSALS.

(a) A firm certified under section 251 as eligible to apply for adjustment assistance may, at any time within 2 years after the date of such certification, file an application with the Secretary for adjustment assistance under this chapter. Such application shall include a proposal for the economic adjustment of such firm.

(b)(1) Adjustment assistance under this chapter consists of technical assistance. The Secretary shall approve a firm's application for adjustment assistance only if the Secretary determines that the firm's adjustment proposal—

(A) is reasonably calculated to materially contribute to the economic adjustment of the firm,

(B) gives adequate consideration to the interests of the workers of such firm, and

(C) demonstrates that the firm will make all reasonable efforts to use its own resources for economic development.

(2) The Secretary shall make a determination as soon as possible after the date on which an application is filed under this section, but in no event later than 60 days after such date.

(c) Whenever the Secretary determines that any firm no longer requires assistance under this chapter, he shall terminate the certification of eligibility of such firm and promptly have notice of such termination published in the Federal Register. Such termination shall take effect on the termination date specified by the Secretary.

SEC. 253. TECHNICAL ASSISTANCE.

(a) The Secretary may provide a firm, on terms and conditions as the Secretary determines to be appropriate, with such technical assistance as in his judgment will carry out the purposes of this chapter with respect to the firm. The technical assistance furnished under this chapter may consist of one or more of the following:

(1) Assistance to a firm in preparing its petition for certification of eligibility under section 251 of this chapter.

(2) Assistance to a certified firm in developing a proposal for its economic adjustment.

(3) Assistance of a certified firm in the implementation of such a proposal.

(b)(1) The Secretary shall furnish technical assistance under this chapter through existing agencies and through private individuals, firms, or institutions (including private consulting services), or by grants to intermediary organizations (including Trade Adjustment Assistance Centers).

(2) In the case of assistance furnished through private individuals, firms, or institutions (including private consulting services), the Secretary may share the cost thereof (but not more than 75 percent of such cost for assistance described in paragraph (2) or (3) of subsection (a) may be borne by the United States).

(3) The Secretary may make grants to intermediary organizations in order to defray up to 100 percent of administrative expenses incurred in providing such technical assistance to a firm.

SEC. 254. FINANCIAL ASSISTANCE.

(a) The Secretary may provide to a firm, on such terms and conditions as he determines to be appropriate, such financial assistance in the form of direct loans or guarantees of loans as in his judgment will materially contribute to the economic adjustment of the firm. The assumption of an outstanding indebtedness of the firm, with or without recourse, shall be considered to be the making of a loan for purposes of this section.

(b) Loans or guarantee of loans shall be made under this chapter only for the purpose of making funds available to the firm—

(1) for acquisition, construction, installation, modernization, development, conversion, or expansion of land, plant, buildings, equipment, facilities, or machinery, or

(2) to supply such working capital as may be necessary to enable the firm to implement its adjustment proposal.

(c) No direct loan may be provided to a firm under this chapter if the firm can obtain loan funds from private sources (with or without a guarantee) at a rate no higher than the maximum interest per annum that a participating financial institution may establish on guaranteed loans made pursuant to section 7(a) of the Small Business Act.

(d) Notwithstanding any other provision of this chapter, no direct loans or guarantees of loans may be made under this chapter after the date of enactment of the Trade Adjustment Assistance Reform and Extension Act of 1986.

SEC. 255. CONDITIONS FOR FINANCIAL ASSISTANCE.

(a) No financial assistance shall be provided under this chapter unless the Secretary determines—

(1) that the funds required are not available from the firm's own resources; and

(2) that there is reasonable assurance of repayment of the loan.

(b)(1) The rate of interest on direct loans made under this chapter shall be—

(A) a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods of maturity that are comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 percent, plus

(B) an amount adequate in the judgment of the Secretary of Commerce to cover administrative costs and probable losses under the program.

(2) The Secretary may not guarantee any loan under this chapter if—

(A) the rate of interest on either the portion to be guaranteed, or the portion not to be guaranteed, is determined by the Secretary to be excessive when compared with other loans bearing Federal guarantees and subject to similar terms and conditions, and

(B) the interest on the loan is exempt from Federal income taxation under section 103 of the Internal Revenue Code of 1954.

(c) The Secretary shall make no loan or guarantee of a loan under section 254(b)(1) having a maturity in excess of 25 years or the useful life of the fixed assets (whichever period is shorter), including renewals and extensions; and shall make no loan or guarantee of a loan under section 254(b)(2) having a maturity in excess of 10 years, including extensions and renewals. Such limitations on maturities shall not, however, apply—

(1) to securities or obligations received by the Secretary as claimant in bankruptcy or equitable reorganization, or as creditor in other proceedings attendant upon insolvency of the obligor, or

(2) to an extension or renewal for an additional period not exceeding 10 years, if the Secretary determines that such extension or renewal is reasonably necessary for the orderly liquidation or servicing of the loan.

(d)(1) In making guarantees of loans, and in making direct loans, the Secretary shall give priority to firms which are small within the meaning of the Small Business Act (and regulations promulgated thereunder).

(2) For any direct loan made, or any loan guaranteed, under the authority of this chapter, the Secretary may enter into arrangements for the servicing, including foreclosure, of such loans or evidences of indebtedness on terms which are reasonable and which protect the financial interests of the United States.

(e) The following conditions apply with respect to any loan guaranteed under this chapter:

(1) No guarantee may be made for an amount which exceeds 90 percent of the outstanding balance of the unpaid principal and interest on the loan.

(2) The loan may be evidenced by multiple obligations for the guaranteed and nonguaranteed portions of the loan.

(3) The guarantee agreement shall be conclusive evidence of the eligibility of any obligation guaranteed thereunder for such guarantee, and the validity of any guarantee agreement shall be incontestable, except for fraud or misrepresentation by the holder.

(f) The Secretary shall maintain operating reserve with respect to anticipated claims under guarantees made under this chapter. Such reserves shall be considered to constitute obligations for purposes of section 1311 of the Supplemental Appropriation Act, 1955 (31 U.S.C. 200).

(g) The Secretary may charge a fee to a lender which makes a loan guaranteed under this chapter in such amount as is necessary to cover the cost of administration of such guarantee.

(h)(1) The aggregate amount of loans made to any firm which are guaranteed under this chapter and which are outstanding at any time shall not exceed $3,000,000.

(2) The aggregate amount of direct loans made to any firm under this chapter which are outstanding at any time shall not exceed $1,000,000.

(i)(1) When considering whether to grant a direct loan or to guarantee a loan to a corporation which is otherwise certified under section 251, the Secretary shall give preference to a corporation which agrees with respect to such loan to fulfill the following requirements—

(A) 25 percent of the principal amount of the loan is paid by the lender to a qualified trust established under an employee stock ownership plan established and maintained by the recipient corporation, by a parent or subsidiary of such corporation, or by several corporations including the recipient corporation,

(B) the employee stock ownership plan meets the requirements of this subsection, and

(C) the agreement among the recipient corporation, the lender, and the qualified trust relating to the loan meets the requirements of this section.

(2) An employee stock ownership plan does not meet the requirements of this subsection unless the governing instrument of the plan provides that—

(A) the amount of the loan paid under paragraph (1)(A) to the qualified trust will be used to purchase qualified employer securities,

(B) the qualified trust will repay to the lender the amount of such loan, together with the interest thereon, out of amounts contributed to the trust by the recipient corporation, and

(C) from time to time, as the qualified trust repays such amount, the trust will allocate qualified employer securities among the individual accounts of participants and their beneficiaries in accordance with the provisions of paragraph (4).

(3) The agreement among the recipient corporation, the lender, and the qualified trust does not meet the requirements of this subsection unless—

(A) it is unconditionally enforceable by any party against the others, jointly and severally,

(B) it provides that the liability of the qualified trust to repay loan amounts paid to the qualified trust may not, at any time, exceed an amount equal to the amount of contributions required under paragraph (2)(B) which are actually received by such trust,

(C) it provides that amounts received by the recipient corporation from the qualified trust for qualified employer securities purchased for the purpose of this subsection will be used exclusively by the recipient corporation for those purposes for which it may use that portion of the loan paid directly to it by the lender,

(D) it provides that the recipient corporation may not reduce the amount of its equity capital during the one year period beginning on the date on which the qualified trust purchases qualified employer securities for purposes of this subsection, and

(E) it provides that the recipient corporation will make contributions to the qualified trust of not less than such amounts as are necessary for such trust to meet its obligation to make repayments of principal and interest on the amount of the loan received by the trust without regard to whether such contributions are deductible by the corporation under section 404 of the Internal Revenue Code of 1954 and without regard to any other amounts the recipient corporation is obligated under law to contribute to or under the employee stock ownership plan.

(4) At the close of each plan year, an employee stock ownership plan shall allocate to the accounts of participating employees that portion of the qualified employer securities the cost of which bears substantially the same ratio to the cost of all the qualified employer securities purchased under paragraph (2)(A) of this subsection as the amount of the loan principal and interest repaid by the qualified trust during that year bears to the total amount of the loan principal and interest payable by such trust during the term of such loan. Qualified employer securities allocated to the individual account of a participant during one plan year must bear substantially the same proportion to the amount of all such securities allocated to all participants in the plan as the amount of compensation paid to such participant bears to the total amount of compensation paid to all such participants during that year.

(5) For purposes of this subsection, the term—

(A) "employee stock ownership plan" means a plan described in section 4975(e)(7) of the Internal Revenue Code of 1954,

(B) "qualified trust" means a trust established under an employee stock ownership plan and meeting the requirements of title I of the Employee Retirement Income Security Act of 1974 and section 401 of the Internal Revenue Code of 1954,

(C) "qualified employer securities" means common stock issued by the recipient corporation or by a parent or subsidiary of such corporation with voting power and dividend rights no less favorable than the voting power and dividend rights on other common stock issued by the issuing corporation and with voting power being exercised by the participants in the employee stock ownership plan after it is allocated to their plan accounts, and

(D) "equity capital" means, with respect to the recipient corporation, the sum of its money and other property (in an amount equal to the adjusted basis of such property but disregarding adjustments made on account of depreciation or amortization made during the period described in paragraph (3)(D)), less the amount of its indebtedness.

SEC. 256. DELEGATION OF FUNCTIONS TO SMALL BUSINESS ADMINISTRATION; AUTHORIZATION OF APPROPRIATIONS.

(a) In the case of any firm which is small (within the meaning of the Small Business Act and regulations promulgated thereunder), the Secretary may delegate all of his functions under this chapter (other than the functions under sections 251 and 252(d) with respect to the certification of eligibility and section 264) to the Administrator of the Small Business Administration.

(b) There are hereby authorized to be appropriated to the Secretary for fiscal years 1986, 1987, 1988, 1989, 1990, and 1991 such sums as may be necessary to carry out his functions under this chapter in connection with furnishing adjustment assistance to firms (including, but not limited to, the payment of principal, interest, and reasonable costs incident to default on loans guaranteed by the Secretary under the authority of this chapter), which sums are authorized to be appropriated to remain available until expended.

(c) The unexpended balances of appropriations authorized by section 312(d) of the Trade Expansion Act of 1962 are transferred to the Secretary to carry out his functions under this chapter.

SEC. 257. ADMINISTRATION OF FINANCIAL ASSISTANCE.

(a) In making and administering guarantees and loans under section 254, the Secretary may—

(1) require security for any such guarantee or loan, and enforce, waive, or subordinate such security;

(2) assign or sell at public or private sale, or otherwise dispose of, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with such guarantees or loans, and collect, compromise, and obtain deficiency judgments with respect to all obligations assigned to or held by him in connection with such guarantees or loans until such time as such obligations may be referred to the Attorney General for suit or collection;

(3) renovate, improve, modernize, complete, insure, rent, sell, or otherwise deal with, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any real or personal property conveyed to or otherwise acquired by him in connection with such guarantees or loans;

(4) acquire, hold, transfer, release, or convey any real or personal property or any interest therein whenever deemed necessary or appropriate, and execute all legal documents for such purposes; and

(5) exercise all such other powers and take all such other acts as may be necessary or incidental to the carrying out of functions pursuant to section 254.

(b) Any mortgage acquired as security under subsection (a) shall be recorded under applicable State law.

(c) All repayments of loans, payments of interest, and other receipts arising out of transactions entered into by the Secretary pursuant to this chapter, shall be available for financing functions performed under this chapter, including administrative expenses in connection with such functions.

(d) To the extent the Secretary deems it appropriate, and consistent with the provisions of section 552(b)(4) and section 552b(c)(4) of title 5, United States Code, that portion of any record, material or data received by the Secretary in connection with any application for financial assistance under this chapter which contains trade secrets or commercial or financial information regarding the operation or competitive position of any business shall be deemed to be privileged or confidential within the meaning of those provisions.

(e) Direct loans made, or loans guaranteed, under this chapter for the acquisition or development of real property or other capital assets shall ordinarily be secured by a first lien on the assets to be financed and shall be fully amortized. To the extent that the Secretary finds that exceptions to these standards are necessary to achieve the objectives of this chapter, he shall develop appropriate criteria for the protection of the interests of the United States.

SEC. 258. PROTECTIVE PROVISIONS.

(a) Each recipient of adjustment assistance under this chapter shall keep records which fully disclose the amount and disposition by such recipient of the proceeds, if any, of such adjustment assistance, and which will facilitate an effective audit. The recipient shall also keep such other records as the Secretary may prescribe.

(b) The Secretary and the Comptroller General of the United States shall have access for the purposes of audit and examination to any books, documents, papers, and records of the recipient petaining to adjustment assistance under this chapter.

(c) No adjustment assistance under this chapter shall be extended to any firm unless the owners, partners, or officers certify to the Secretary—

(1) the names of any attorneys, agents, and other persons engaged by or on behalf of the firm for the purpose of expediting applications for such adjustment assistance; and

(2) the fees paid or to be paid to any such person.

(d) No financial assistance shall be provided to any firm under this chapter unless the owners, partners, or officers shall execute an agreement binding them and the firm for a period of 2 years after such financial assistance is provided, to refrain from employing, tendering any office or employment to, or retaining for professional services any person who, on the date such assistance or any part thereof was provided, or within 1 year prior thereto, shall have served as an officer, attorney, agent, or employee occupying a position or engaging in activities which the Secretary shall have determined involve discretion with respect to the provision of such financial assistance.

SEC. 259. PENALTIES.

Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, or whoever willfully overvalues any security, for the purpose of influencing in any way a determination under this chapter, or for the purpose of obtaining money, property, or anything of value under this chapter, shall be fined not more than $5,000 or imprisoned for not more than 2 years, or both.

SEC. 260. CIVIL ACTIONS.

In providing technical and financial assistance under this chapter the Secretary may sue and be sued in any court of record of a State having general jurisdiction or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against him or his property. Nothing in this section shall be construed to except the activities pursuant to sections 253 and 254 from the application of sections 516, 547, and 2679 of title 28 of the United States Code.

SEC. 261. DEFINITIONS.

For purposes of this chapter, the term "firm" includes an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy, and receiver under decree of any court. A firm, together with any predecessor or successor firm, or any affiliated firm controlled or substantially beneficially owned by substantially the same persons, may be considered a single firm where necessary to prevent unjustifiable benefits.

SEC. 262. REGULATIONS.

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this chapter.

[SEC. 263. REPEALED.]

SEC. 264. STUDY BY SECRETARY OF COMMERCE WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION; ACTION WHERE THERE IS AFFIRMATIVE FINDING.

(a) Whenever the Commission begins an investigation under section 201 with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of firms in the domestic industry producing the like or directly competitive article which have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the orderly adjustment of such firms to the import competition may be facilitated through the use of existing programs.

(b) The report of the Secretary of the study under subsection (a) shall be made to the President not later than 15 days after the day on which the Commission makes its report under section 201. Upon making its report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

(c) Whenever the Commission makes an affirmative finding under section 201(b) that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, the Secretary shall make available, to the extent feasible, full information to the firms in such industry about programs which may facilitate the orderly adjustment to import competition of such firms, and he shall provide assistance in the preparation and processing of petitions and applications of such firms for program benefits.

SEC. 265. ASSISTANCE TO INDUSTRIES.

(a) The Secretary may provide technical assistance, on such terms and conditions as the Secretary deems appropriate, for the establishment of industrywide programs for new product development, new process development, export development, or other uses consistent with the purposes of this chapter. Such technical assistance may be provided through existing agencies, private individuals, firms, universities and institutions, and by grants, contracts, or cooperative agreements to associations, unions, or other nonprofit industry organizations in which a substantial number of firms or workers have been certified as eligible to apply for adjustment assistance under section 223 or 251.

(b) Expenditures for technical assistance under this section may be up to $10,000,000 annually per industry and shall be made under such terms and conditions as the Secretary deems appropriate.

[CHAPTER 4—"ADJUSTMENT ASSISTANCE FOR COMMUNITIES" terminated September 30, 1982]

CHAPTER 5—MISCELLANEOUS PROVISIONS

SEC. 280. GENERAL ACCOUNTING OFFICE REPORT.

(a) The Comptroller General of the United States shall conduct a study of the adjustment assistance programs established under chapters 2, 3, and 4 of this title and shall report the results of such study to the Congress no later than January 31, 1980. Such report shall include an evaluation of—

(1) the effectiveness of such programs in aiding workers, firms, and communities to adjust to changed economic conditions resulting from changes in the patterns of international trade; and

(2) the coordination of the administration of such programs and other Government programs which provide unemployment compensation and relief to depressed areas.

(b) In carrying out his responsibilities under this section, the Comptroller General shall, to the extent practical, avail himself of the assistance of the Departments of Labor and Commerce. The Secretaries of Labor and Commerce shall make available to the Comptroller General any assistance necessary for an effective evaluation of the adjustment assistance programs established under this title.

SEC. 281. COORDINATION.

There is established the Adjustment Assistance Coordinating Committee to consist of a Deputy United States Trade Representative as Chairman, and the officials charged with adjustment assistance responsibilities of the Departments of Labor and Commerce and the Small Business Administration. It shall be the function of the Committee to coordinate the adjustment assistance policies, studies, and programs of the various agencies involved and to promote the efficient and effective delivery of adjustment assistance benefits.

SEC. 282. TRADE MONITORING SYSTEM.

The Secretary of Commerce and the Secretary of Labor shall establish and maintain a program to monitor imports of articles into the United States which will reflect changes in the volume of such imports, the relation of such imports to changes in domestic production, changes in employment within domestic industries producing articles like or directly competitive with such imports, and the extent to which such changes in production and employment are concentrated in specific geographic regions of the United States. A summary of the information gathered under this section shall be published regularly and provided to the Adjustment Assistance Coordinating Committee, the International Trade Commission, and to the Congress.

SEC. 283. FIRMS RELOCATING IN FOREIGN COUNTRIES.

Before moving productive facilities from the United States to a foreign country, every firm should—

(1) provide notice of the move to its employees who are likely to be totally or partially separated as a result of the move at least 60 days before the date of such move, and

(2) provide notice of the move to the Secretary of Labor and the Secretary of Commerce on the same day it notifies employees under paragraph (1).

(b) It is the sense of the Congress that every such firm should—

(1) apply for and use all adjustment assistance for which it is eligible under this title,

(2) offer employment opportunities in the United States, if any exist, to its employees who are totally or partially separated workers as a result of the move, and

(3) assist in relocating employees to other locations in the United States where employment opportunities exist.

SEC. 284. JUDICIAL REVIEW.

(a) A worker, group of workers, certified or recognized union, or authorized representative of such worker or group aggrieved by a final determination of the Secretary of Labor under section 223 of this title, a firm or its representative or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 251 of this title, or a community or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 271 of this title may, within sixty days after notice of such determination, commence a civil action in the United States Court of International Trade for review of such determination. The clerk of such court shall send a copy of the summons and the complaint in such action to the Secretary of Labor or the Secretary of Commerce, as the case may be. Upon receiving a copy of such summons and complaint, such Secretary shall promptly certify and file in such court the record on which he based such determination.

(b) The findings of fact by the Secretary of Labor or the Secretary of Commerce, as the case may be, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to such Secretary to take further evidence, and such Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) The Court of International Trade shall have jurisdiction to affirm the action of the Secretary of Labor or the Secretary of Commerce, as the case may be, or to set such action aside, in whole or in part. The judgment of the Court of International Trade shall be subject to review by the United States Court of Appeals for the Federal Circuit as prescribed by the rules of such court. The judgment of the Court of Appeals for the Federal Circuit shall be subject to review by the Supreme Court of the United States upon certiorari as provided in section 1256 of title 28.

SEC. 285. TERMINATION.

(a) Chapter 4 shall terminate on September 30, 1982.

(b) No assistance, allowances, or other payments may be provided under chapter 2, and no technical assistance may be provided under chapter 3, after September 30, 1991.

Chapter 10: OTHER LAWS REGULATING IMPORTS

A. RESTRICTION ON IMPORTS OF AGRICULTURAL AND TEXTILE PRODUCTS

Authorities To Restrict Imports of Agricultural and Textile Products

1. Section 204 of Agricultural Act of 1956, as amended

[7 U.S.C. 1854; P.L. 84-540, as amended by P.L. 87-488]

SEC. 204. The President may, whenever he determines such action appropriate, negotiate with representatives of foreign governments in an effort to obtain agreements limiting the export from such countries and the importation into the United States of any agricultural commodity or product manufactured therefrom or textiles or textile products, and the President is authorized to issue regulations governing the entry or withdrawal from warehouse of any such commodity, product, textiles, or textile products to carry out any such agreement. In addition, if a multilateral agreement has been or shall be concluded under the authority of this section among countries accounting for a significant part of world trade in the articles with respect to which the agreement was concluded, the President may also issue, in order to carry out such an agreement, regulations governing the entry or withdrawal from warehouse of the same articles which are the products of countries not parties to the agreement. Nothing herein shall affect the authority provided under section 22 of the Agricultural Adjustment Act (of 1933) as amended.

2. Section 22 of Agricultural Adjustment Act of 1933, as amended

[7 U.S.C. 624; Act of May 12, 1933, as added by P.L. 74-320, as amended by Act of Feb. 29, 1936, Act of June 3, 1937, Act of Jan. 25, 1940, Act of July 3, 1948, Act of June 28, 1950, Act of June 16, 1951, and Act of Aug. 7, 1953]

SEC. 22. (a) Whenever the Secretary of Agriculture has reason to believe that any article or articles are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, any program or operation undertaken under this title or the Soil Conservation and Domestic Allotment Act, as amended, or section 32, Public Law Numbered 320, Seventy-Fourth Congress, approved August 24, 1935, as amended, or any loan, purchase, or other program or operation undertaken by the Department of Agriculture, or any agency operating under its direction, with respect to any agricultural commodity or product thereof, or to reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof with respect to which any such program or operation is being undertaken, he shall so advise the President, and, if the President agrees that there is reason for such belief, the President shall cause an immediate investigation to be made by the United States International Trade Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties, and shall be conducted subject to such regulations as the President shall specify.

(b) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such fees not in excess of 50 per centum ad valorem or such quantitative limitations on any article or articles which may be entered, or withdrawn from warehouse, for consumption as he finds and declares shown by such investigation to be necessary in order that the entry of such article or articles will not render or tend to render ineffective, or materially interfere with, any program or operation referred to in subsection (a) of this section, or reduce substantially the amount of any product processed in the United States from any such agricultural commodity or product thereof with respect to which any such program or operation is being undertaken: *Provided,* That no proclamation under this section shall impose any limitation on the total quantity of any article or articles which may be entered, or withdrawn from warehouse, for consumption which reduces such permissible total quantity to proportionately less than 50 per centum of the total quantity of such article or articles which was entered, or withdrawn from warehouse, for consumption during a representative period as determined by the President. *And provided further,* That in designating any article or articles, the President may describe them by physical qualities, value, use, or upon such other bases as he shall determine.

In any case where the Secretary of Agriculture determines and reports to the President with regard to any article or articles that a condition exists requiring emergency treatment, the President may take immediate action under this section without awaiting the recommendations of the International Trade Commission, such action to continue in effect pending the report and recommendations of the Trade Commission and action thereon by the President.

(c) The fees and limitations imposed by the President by proclamation under this section and any revocation, suspension, or modification thereof, shall become effective on such date as shall be therein specified, and such fees shall be treated for administrative purposes and for the purposes of section 32, Public Law Numbered 320, Seventy-Fourth Congress, approved August 24, 1935, as amended, as duties imposed by the Tariff Act of 1930, but such fees shall not be considered as duties for the purpose of granting any preferential concession under any international obligation of the United States.

(d) After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended or terminated by the President whenever he finds and proclaims that the circumstances requiring the proclamation or provision thereof no longer exist or may be modified by the President whenever he finds and proclaims that changed circumstances require such modification to carry out the purposes of this section.

(e) Any decision of the President as to facts under this section shall be final.

(f) No trade agreement or other international agreement heretofore or hereafter entered into by the United States shall be applied in a manner inconsistent with the requirements of this section.

3. Meat Import Act of 1979

[19 U.S.C. 1202 note; P.L. 88-482, as amended by P.L. 96-177]

AN ACT To modify the method of establishing quotas on the importation of certain meat, to include within such quotas certain meat products, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Act of August 22, 1964, entitled "An Act to provide for the free importation of certain wild animals, and to provide for the imposition of quotas on certain meat and meat products" (19 U.S.C. 1202 note) is amended to read as follows:

"SEC. 2. (a) This section may be cited as the 'Meat Import Act of 1979'.

"(b) For purposes of this section—

"(1) The term 'entered' means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

"(2) The term 'meat articles' means the articles provided for in the Tariff Schedules of the United States (19 U.S.C. 1202) under—

"(A) item 106.10 (relating to fresh, chilled, or frozen cattle meat);

"(B) items 106.22 and 106.25 (relating to fresh, chilled, or frozen meat of goats and sheep (except lambs)); and

"(C) items 107.55 and 107.62 (relating to prepared and preserved beef and veal (except sausage)), if the articles are prepared, whether fresh, chilled, or frozen, but not otherwise preserved.

"(3) The term 'Secretary' means the Secretary of Agriculture.

"(c) The aggregate quantity of meat articles which may be entered in any calendar year after 1979 may not exceed 1,204,600,000 pounds; except that this aggregate quantity shall be—

"(1) increased or decreased for any calendar year by the same percentage that the estimated average annual domestic commercial production of meat articles in that calendar year and the 2 preceding calendar years increases or decreases in comparison with the average annual domestic commercial production of meat articles during calendar years 1968 through 1977; and

"(2) adjusted further under subsection (d).

For purposes of paragraph (1), the estimated annual domestic commercial production of meat articles for any calendar year does not include the carcass weight of live cattle specified in items 100.40, 100.43, 100.45, 100.53, and 100.55 of such Schedules entered during such year.

"(d) The aggregate quantity referred to in subsection (c), as increased or decreased under paragraph (1) of such subsection, shall be adjusted further for any calendar year after 1979 by multiplying such quantity by a fraction—

"(1) the numerator of which is the average annual per capita production of domestic cow beef during that calendar year (as estimated) and the 4 calendar years preceding such calendar year, and

"(2) the denominator of which is the average annual per capita production of domestic cow beef in that calendar year (as estimated) and the preceding calendar year.

For the purposes of this subsection, the phrase 'domestic cow beef' means that portion of the total domestic cattle slaughter designated by the Secretary as cow slaughter.

"(e) For each calendar year after 1979, the Secretary shall estimate and publish—

"(1) before the first day of such calendar year, the aggregate quantity prescribed for such calendar year under subsection (c) as adjusted under subsection (d); and

"(2) before the first day of each calendar quarter in such calendar year, the aggregate quantity of meat articles which (but for this section) would be entered during such calendar year.

In applying paragraph (2) for the second or any succeeding calendar quarter in any calendar year, actual entries for the preceding calendar quarter or quarters in such calendar year shall be taken into account to the extent data is available.

"(f)(1) If the aggregate quantity estimated before any calendar quarter by the Secretary under subsection (e)(2) is 110 percent or more of the aggregate quantity estimated by him under subsection (e)(1), and if there is no limitation in effect under this section for such calendar year with respect to meat articles, the President shall by proclamation limit the total quantity of meat articles which may be entered during such calendar year to the aggregate quantity estimated for such calendar year by the Secretary under subsection (e)(1); except that no limitation imposed under this paragraph for any calendar year may be less than 1,250,000,000 pounds. The President shall include in the articles subject to any limit proclaimed under this paragraph any article of meat provided for in item 107.61 of the Tariff Schedules of the United States (relating to high-quality beef specially processed into fancy cuts).

"(2) If the aggregate quantity estimated before any calendar quarter by the Secretary under subsection (e)(2) is less than 110 percent of the aggregate quantity estimated by him under subsection (e)(1), and if a limitation is in effect under this section for such calendar year with respect to meat articles, such limitation shall cease to apply as of the first day of such calendar quarter. If any such limitation has been in effect for the third calendar quarter of any calendar year, then it shall continue in effect for the fourth calendar quarter of such year unless the proclamation is suspended or the total quantity is increased pursuant to subsection (g).

"(g) The President may, after providing opportunity for public comment by giving 30 days' notice by publication in the Federal Register of his intention to so act, suspend any proclamation made under subsection (f), or increase the total quantity proclaimed under such subsection, if he determines and proclaims that—

"(1) such action is required by overriding economic or national security interests of the United States, giving special weight to the importance to the Nation of the economic well-being of the domestic cattle industry;

"(2) the supply of meat articles will be inadequate to meet domestic demand at reasonable prices; or

"(3) trade agreements entered into after the date of enactment of this Act insure that the policy set forth in subsections (c) and (d) will be carried out.

Any such suspension shall be for such periods, and any such increase shall be in such amount, as the President determines and proclaims to be necessary to carry out the purposes of this subsection.

"(h) Notwithstanding the previous subsections, the total quantity of meat articles which may be entered during any calendar year may not be increased by the President if the fraction described in subsection (d) for that calendar year yields a quotient of less than 1.0, unless—

"(1) during a period of national emergency declared under section 201 of the National Emergencies Act of 1976, he determines and proclaims that such action is required by overriding national security interests of the United States;

"(2) he determines and proclaims that the supply of articles of the kind to which the limitation would otherwise apply will be inadequate, because of a natural disaster, disease, or major national market disruption, to meet domestic demand at reasonable prices; or

"(3) on the basis of actual data for the first two quarters of the calendar year, a revised calculation of the fraction described in subsection (d) for the calendar year yields a quotient of 1.0 or more.

Any such suspension shall be for such period, and any such increase shall be in such amount, as the President determines and proclaims to be necessary to carry out the purposes of this subsection. The effective period of any such suspension or increase made pursuant to paragraph (1) may not extend beyond the termination, in accordance with the provisions of section 202 of the National Emergencies Act of 1976, of such period of national emergency, notwithstanding the provisions of section 202(a) of that Act.

"(i) The Secretary shall allocate the total quantity proclaimed under subsection (f)(1) and any increase in such quantity provided for under subsection (g) among supplying countries on the basis of the shares of the United States market for meat articles such countries supplied during a representative period. Notwithstanding the preceding sentence, due account may be given to special factors which have affected or may affect the trade in meat articles or cattle. The Secretary shall certify such allocations to the Secretary of the Treasury.

"(j) The Secertary shall issue such regulations as he determines to be necessary to prevent circumvention of the purposes of this section.

"(k) All determinations by the President and the Secretary under this section shall be final.

"(l) The Secretary of Agriculture shall study the regional economic impact of imports of meat articles and report the results of his study, together with any recommendations (including recommendations for legislation, if any) to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate not later than June 30, 1980.".

SEC. 2. This Act shall take effect January 1, 1980.

4. Sugar Quotas Under Headnote Authorities

[Headnotes 2 and 3 of part 10A of schedule 1 of Tariff Schedules of the United States]

PART 10.—SUGAR; COCOA; CONFECTIONERY

SUBPART A.—SUGARS, SIRUPS, AND MOLASSES

Subpart A headnotes:

* * * * * * *

2. The rates in column numbered 1 in items 155.20 and 155.30 on January 1, 1968, shall be effective only during such time as title II of the Sugar Act of 1948 or substantially equivalent legislation is in effect in the United States, whether or not the quotas, or any of them, authorized by such legislation, are being applied or are suspended: *Provided,*

(i) That, if the President finds that a particular rate not lower than such January 1, 1968, rate, limited by a particular quota, may be established for any articles provided for in item 155.20 or 155.30, which will give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade, he shall proclaim such particular rate and such quota limitation, to be effective not later than the 90th day following the terminaton of the effectiveness of such legislation;

(ii) That any rate and quota limitation so established shall be modified if the President finds and proclaims that such modification is required or appropriate to give effect to the above considerations; and

(iii) That the January 1, 1968, rates shall resume full effectiveness, subject to the provisions of this headnote, if legislation substantially equivalent to title II of the Sugar Act of 1948 should subsequently become effective.

3. (a) *The total amount of sugars, sirups and molasses described in items 155.20 and 155.30, the products of all foreign countries, en-

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* Headnote 3(a) has been rewritten here by committee staff to reflect changes in quota amounts as announced by the Secretary of Agriculture on December 15, 1986.

tered, or withdrawn from warehouse for consumption, between January 1 and December 31, 1987, inclusive, shall be limited to 1,001,430 short tons, raw value. Of this amount, the total amount permitted to be imported for purposes of paragraph (c)(i) of this headnote (the total base quota amount) shall be 910,000 short tons, raw value. In accordance with paragraph (c)(ii) of this headnote, 2,000 short tons, raw value, may only be used for the importation of "specialty sugars" as defined by the United States Trade Representative. In addition, 25,160 short tons is established as the quota adjustment amount. The minimum quota allocation is 78,500 short tons.

(b) Beginning with the third calendar quarter of 1982, the Secretary of Agriculture (hereafter the Secretary) shall establish for each calendar quarter the total amount (expressed in terms of raw value) of sugars, sirups, and molasses described in items 155.20 and 155.30, the products of all foreign countries, which may be entered, or withdrawn from warehouse for consumption, during such calendar quarter. The Secretary shall determine such amount, inform the Secretary of the Treasury of his determination, and file notice thereof with the Federal Register no later than the 15th day of the month immediately preceding the calendar quarter during which such determination shall be in effect. In determining such amounts the Secretary shall give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

(c)(i) The total base quota amount of sugars, sirups, and molasses permitted to be imported under paragraphs (a) and (b) of this headnote shall be allocated to the following supplying countries or areas in the following percentages:

Country	*Percentage*
1. Canada	1.1
2. Guatemala	4.8
3. Belize	1.1
4. El Salvador	2.6
5. Honduras	1.0
6. Nicaragua (see note 2)	2.1
7. Costa Rica	1.5
8. Panama	2.9
9. Jamaica	1.1
10. Dominican Republic	17.6
11. Colombia	2.4
12. Guyana	1.2
13. Ecuador	1.1
14. Peru	4.1
15. Brazil	14.5
16. Argentina	4.3
17. Thailand	1.4
18. Philippines	15.8
19. Taiwan	1.2
20. Australia	8.3
21. Mauritius	1.1
22. Mozambique	1.3
23. Swaziland	1.6
24. Barbados	0.7
25. Trinidad-Tobago	0.7
26. Bolivia	0.8
27. India	0.8
28. Fiji	0.7

Country	*Percentage*
29. Malawi	0.7
30. Zimbabwe	1.2
Other specified countries and areas	0.3
Total	100.0

Note 1: The category "Other specified countries and areas" shall consist of the following: Mexico, Haiti, Paraguay, Saint Christopher-Nevis, Malagasy Republic, the Ivory Coast, Congo and Uruguay.

2: Beginning with the quota year beginning September 26, 1983, the quota allocations for Nicaragua, Costa Rica, El Salvador and Honduras shall be as follows:

Nicaragua—6,000 short tons, raw value.

El Salvador—2.6 percent of the total base quota amount permitted to be imported under paragraphs (a) and (b) of this headnote plus 18 percent of the difference between 2.1 percent of the total base quota amount and 6,000 short tons, raw value.

Honduras—1.0 percent of the total base quota amount plus 52 percent ~~of the difference~~ between 2.1 percent of the total base quota amount and 6,000 short tons, raw value.

Costa Rica—1.5 percent of the total base quota amount plus 30 percent of the difference between 2.1 percent of the total base quota amount and 6,000 short tons, raw value.

Notwithstanding the allocation provisions set forth above, the Secretary may, after consultation with the U.S. Trade Representative, the Department of State and the Department of the Treasury, issue regulations modifying the allocation provisions governing "Other specified countries and areas" if the Secretary determines that such modifications are appropriate to provide such countries and areas reasonable access to the United States sugar market. Such regulations may, among other things, provide for the establishment of minimum quota amounts, the establishment of quota periods other than quarterly periods, and the carrying forward of unused quota amounts into subsequent quota periods.

(ii) the total amount of specialty sugars permitted to be imported under paragraphs (a) and (b) of this headnote shall be allocated by providing each of the following countries an annual quota of 80 short tons, raw value, for the importation of specialty sugars:

Belgium; Burma; Cameroon; China, People's Republic of; Denmark; France; Germany, Federal Republic of; Hong Kong; Indonesia; Ireland; Italy; Japan; Kenya; Luxembourg; Netherlands; Netherlands Antilles; South Korea; Surinam; Sweden; Switzerland; United Kingdom; Venezuela; and Yemen.

(iii) Notwithstanding any authority given to the United States Trade Representative under paragraphs (e) and (g) of this headnote—

(A) the percentage allocation made to the Philippines under this paragraph may not be reduced, and

(B) no allocation may be made to the Republic of South Africa,

in allocating any limitation imposed under any paragraph of this headnote on the quantity of sugars sirups, and molasses described in items 155.20 and 155.30 which may be entered.

(d) The Secretary, after consultation with the U.S. Trade Representative and the Department of State, may suspend the allocation provisions of paragraph (c), or may establish quantitative limitations for periods of time other than calendar quarters as provided in paragraph (b), if the Secretary determines that such action or actions are appropriate to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. The Secretary may reinstate the allocation provisions of paragraph (c), or may amend any quantitative limitations (including the time period for which such limitations are applicable) which have previously been established under this paragraph or paragraph (b), if the Secretary determines that the considerations set forth in the previous sentence so warrant. The Secretary shall inform the Secretary of the Treasury of any determination made under this paragraph. Notice of such determinations shall be filed with the Federal Register, and such determinations shall not become effective until the day following the date of filing of such notice or such later date as may be specified by the Secretary.

(e) The U.S. Trade Representative or his designee, after consultation with the Department of Agriculture ~~and the Department of~~ State, may modify the allocation provisions of paragraph (c) (including the deletion or addition of any country or area), and may prescribe further rules, limitations or prohibitions on the entry of sugar if he finds that such actions are appropriate to carry out the obligations of the United States under the International Sugar Agreement, 1977, or any successor agreement thereto, and that such actions give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. If the U.S. Trade Representative takes any such action, he shall so inform the Secretary of the Treasury and the Secretary of Agriculture and shall publish notice thereof in the Federal Register. Such action shall not become effective until the day following the date of filing of such notice or such later date as may be specified by the U.S. Trade Representative.

(f) The Secretary shall, in consultation with the U.S. Trade Representative, the Department of State, and other concerned agencies, review the operation of this headnote prior to September 1 of each year. In making such review, the Secretary shall determine whether the continued operation of paragraphs (b), (c), (d), and (e) of this headnote gives due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade, and whether the operation of paragraph (g) of this headnote would give due consideration to such interests. The Secretary shall file a notice of such determinations in the Federal Register no later than September 1 of each year. If the Secretary determines that the continued operation of paragraphs (b), (c), (d), and (e) of this headnote would not give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade, and that the provisions of paragraph (g) of this headnote would give due consideration to such interests, paragraphs (b), (c), (d), and (e) of this headnote shall terminate as of the first day of October following such determinations.

(g) If paragraphs (b), (c), (d), and (e) of this headnote are terminated under the provisions of paragraph (f) of this headnote, the total amount of sugars, sirups, and molasses described in items 155.20 and 155.30, the products of all foreign countries, entered, or withdrawn from warehouse for consumption, in any fiscal (October 1-September 30) year shall not exceed, in the aggregate, 6,900,000 short tons, raw value. The U.S. Trade Representative or his designee may allocate this quantity among supplying countries or areas, and may prescribe further rules, regulations, limitations or prohibitions on the entry of sugar in accordance with the International Sugar Agreement, 1977, and Public Law 96-236. The U.S. Trade Representative or his designee shall inform the Commissioner of Customs of any such action regarding the importation of sugar, and shall publish notice thereof in the Federal Register.

(h) For the purposes of this headnote, the term "raw value" means the equivalent of such articles in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope as determined in accordance with regulations issued by the Secretary of the Treasury. Such regulations may, among other things, provide:

(1) for the entry of such articles pending a final determination of polarity; and (2) that positive or negative adjustments for differences in preliminary and final raw values be made in the same or succeeding quota periods. The principal grades and types of sugar shall be translated into terms of raw value in the following manner:

(i) For articles described in item 155.20, by multiplying the number of pounds thereof by the greater of 0.93, or 1.07 less 0.0175 for each degree of polarization under 100 degrees (and fractions of a degree in proportion).

(ii) For articles described in item 155.30, by multiplying the number of pounds of the total sugars thereof (the sum of the sucrose and reducing or invert sugars) by 1.07.

(iii) The Secretary of the Treasury shall establish methods for translating sugar into terms of raw value for any special grade or type of sugar for which he determines that the raw value cannot be measured adequately under the above provisions.

(i) The Secretary may exempt the entry of articles described in items 155.20 and 155.30 from the requirements or limitations established pursuant to this headnote on the condition that such articles:

(1) be used only for the production (other than by distillation of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption; or

(2) be re-exported in refined form or in sugar containing products. Such articles shall be entered under licenses issued pursuant to regulations promulgated by the Secretary. In promulgating such regulations, the Secretary shall give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. Such regulations may contain any terms, conditions, bonds, or other limitations as the Secretary determines are appropriate to ensure that articles imported under license are used only for the purposes

specified in this paragraph. This paragraph shall terminate whenever paragraphs (b), (c), (d), and (e) of this headnote are terminated under paragraph (f) of this headnote.

4. For such period as there is in effect a proclamation issued by the President pursuant to the authority vested in him by section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) to protect a price-support program for sugar beets and sugar cane, the importation and duty-free treatment of sugars, sirups, and molasses, provided for in items 155.20 and 155.30, in accordance with general headnote 3(e)(iii), shall be governed in the following manner:

(a)(i) For all beneficiary countries, except those subject to subparagraph (ii) and paragraph (b), duty-free treatment shall be provided in the same manner as it is provided pursuant to title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.), at the time of the effective date of the Caribbean Basin Economic Recovery Act; except that the President, may suspend or adjust upward the value limitation provided for in section 504(c)(1) of the Trade Act of 1974 on the duty-free treatment afforded to beneficiary countries under general headnote 3(e)(vii) if he finds that such adjustment will not interfere with the price support program for sugar beets and sugar cane and is appropriate in light of market conditions.

(ii) As an alternative to subparagraph (i), the President may, at the request of a beneficiary country not subject to paragraph (b) and upon the recommendation of the Secretary of Agriculture, elect to permit sugar, sirups, and molasses from that country to enter duty-free during a calendar year subject to quantitative limitations to be established by the President on the quantity of sugar, sirups, and molasses entered from that country.

(b) For the following countries whose exports of sugar, sirups, and molasses in 1981 were not eligible for duty-free treatment because of the operation of section 504(c) of the Trade Act of 1974, the quantity of sugar, sirups, and molasses which may be entered in any calendar year shall be limited to no more than the quantity specified below:

Dominican Republic, 780,000 metric tons
Guatemala, 210,000 metric tons
Panama, 160,000 metric tons

Such sugar, sirups, and molasses shall be admitted free of duty, except as provided for in paragraph (c).

(c) The President, upon the recommendation of the Secretary of Agriculture, may suspend or adjust upward the quantitative limitations imposed under paragraph (a)(ii) or (b) if he determines such action will not interfere with the price-support program for sugar beets and sugar cane and is appropriate in light of market conditions. The President, upon the recommendation of the Secretary of Agriculture, may suspend the duty-free treatment for all or part of the quantity of sugar, sirups, and molasses permitted to be entered by paragraphs (a)(ii) and (b) if such action is necessary to protect the price-support program for sugar beets and sugar cane.

(d) Any quantitative limitation imposed on a beneficiary country under paragraphs (a)(ii) and (b) shall apply only to the extent that such limitation permits a lesser quantity of sugar, sirups, and molasses to be entered from that country than the quantity that would be permitted to be entered under any other provision of law.

5. Import Prohibitions on Certain Agricultural Commodities Under Marketing Orders

[7 U.S.C. 608e–1; Act of Mar. 12, 1933, as amended by Act of Aug. 31, 1954, P.L. 87–128, P.L. 91–670, P.L. 95–133, and P.L. 97–312]

SEC. 608e–1. IMPORT PROHIBITIONS ON TOMATOES, AVOCADOS, LIMES, ETC.; RULES AND REGULATIONS.

Notwithstanding any other provision of law, whenever a marketing order issued by the Secretary of Agriculture pursuant to section 608c of this title contains any terms or conditions regulating the grade, size, quality or maturity of tomatoes, raisins, olives (other than Spanish-style green olives), prunes, avocados, mangoes, limes, grapefruit, green peppers, Irish potatoes, cucumbers, oranges, onions, walnuts, dates, filberts, table grapes, or eggplants produced in the United States the importation into the United States of any such commodity, other than dates for processing, during the period of time such order is in effect shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of such order or comparable restrictions promulgated hereunder: *Provided,* That this prohibition shall not apply to such commodities when shipped into continental United States from the Commonwealth of Puerto Rico or any Territory or possession of the United States where this chapter has force and effect: *Provided further,* That whenever two or more such marketing orders regulating the same agricultural commodity produced in different areas of the United States are concurrently in effect, the importation into the United States of any such commodity, other than dates for processing, shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of the order which, as determined by the Secretary of Agriculture, regulates the commodity produced in the area with which the imported commodity is in most direct competition. Such prohibition shall not become effective until after the giving of such notice as the Secretary of Agriculture determines reasonable, which shall not be less than three days. In determining the amount of notice that is reasonable in the case of tomatoes the Secretary of Agriculture shall give due consideration to the time required for their transportation and entry into the United States after picking. Whenever the Secretary of Agriculture finds that the application of the restrictions under a marketing order to an imported commodity is not practicable because of variations in characteristics between the domestic and imported commodity he shall establish with respect to the imported commodity, other than dates for processing, such grade, size, quality, and maturity restrictions by varieties, types, or other classifications as he finds will be equivalent or comparable to those imposed upon the domestic commodity under such order. The Secretary of Agriculture may promulgate such rules and regulations as he deems necessary, to carry out the provisions of this section. Any person who violates any provision if this section or of any rule, regulation, or order promulgated hereunder shall be subject to a forfeiture in the amount prescribed in section 608a(5) of this title or, upon conviction, a penalty in the amount prescribed in section 608c(14) of this title, or to both such forfeiture and penalty.

B. STEEL IMPORT STABILIZATION ACT

Title VIII of Trade and Tariff Act of 1984

[19 U.S.C. 2253 note; P.L. 98-573]

SEC. 801. SHORT TITLE.

This title may be cited as the "Steel Import Stabilization Act".

SEC. 802. FINDINGS AND PURPOSES.

(a) The Congress finds that—

(1) The United States steel industry has a serious need to modernize its plant and equipment in order to enhance its international competitiveness, and needs increased capital investments to effect that modernization;

(2) the ability of the domestic steel industry to be internationally competitive is, and has been, impeded by the effects of the enormous Federal budget deficit, an overvalued dollar, and increasing trade deficits, as well as serious injury due to imports of, and subsidies, dumping, and the use of other unfair and restrictive foreign trade practices regarding steel products;

(3) the extensiveness of the unfair trade practices engaged in the international market regarding such products imposes unusually harsh burdens on the United States steel industry in combating those practices through the trade remedy laws;

(4) expeditious and effective action under the President's national policy for the steel industry, including more vigorous efforts by the Executive Branch to self-initiate and pursue remedies against those practices, is needed to eliminate the adverse effects of those unfair trade practices;

(5) import relief will be ineffective and will not serve the national economic interest unless the industry during the period of relief engages in serious efforts substantially to modernize and to improve its international competitiveness; and

(6) full and effective implementation of the national policy for the steel industry will substantially improve the economy and employment in both the steel and iron ore-producing sectors.

(b) The purposes of this title are—

(1) to supplement the authority of the President to achieve the goals of the national policy for the steel industry by granting enforcement powers regarding those bilateral arrangements that are entered into or undertaken for purposes of implementing that national policy; and

(2) to make the continuation of those powers subject to the condition that the steel industry undertake a comprehensive modernization of its plant and equipment.

SEC. 803. SENSE OF CONGRESS REGARDING THE NATIONAL POLICY FOR THE STEEL INDUSTRY.

It is the sense of the Congress that—

(1) the President should, in conjunction with the authority granted under this title, implement the national policy for the steel industry in a manner to ensure that the foreign share of the United States market for steel products is commensurate with a level which would obtain under conditions of fair, unsubsidized competition; and it is further the sense of Congress that when this policy is fully implemented, it will result in a foreign share of the domestic market of 17.0 to 20.2 percent, subject to such modifications that changes in market conditions and the composition of the steel industry may require;

(2) the national policy for the steel industry should not be implemented in a manner contrary to the antitrust laws; and

(3) if the national policy for the steel industry does not produce satisfactory results within a reasonable period of time, the Congress will consider taking such legislative actions concerning steel and iron ore products as may be necessary or appropriate to stabilize conditions in the domestic market for such products.

SEC. 804. DEFINITIONS.

As used in this title—

(1) The term "bilateral arrangement" means any arrangement, agreement, or understanding (including, but not limited to, any surge control undertanding or suspension agreement) entered into or undertaken, or previously entered into or undertaken, by the United States and any foreign country or customs union containing such quantitative limitations, restrictions, or other terms relating to the importation into, or exportation to, the United States of categories of steel products as may be necessary to implement the national policy for the steel industry.

(2) The term "national policy for the steel industry" means those actions and elements described in Executive Communication 4046, dated September 18, 1984 (printed as House Document 98-263).

(3) The term "steel industry" means producers in the United States of steel products.

SEC. 805. ENFORCEMENT AUTHORITY.

(a) Subject to section 806, the President is authorized to carry out such actions as may be necessary or appropriate to enforce the quantitative limitations, restrictions, and other terms agreed to between the United States and steel-exporting nations as contained in bilateral arrangements. Such actions may include, but are not limited to, requirements that valid export licenses or other documentation issued by a foreign government be presented as a condition for the entry into the United States of steel products.

(b)(1) In connection with the provisions of the Arrangement on European Communities' Export of Pipes and Tubes to the United States of America, contained in an exchange of letters dated October 21, 1982, between representatives of the United States and the Commission of the European Communities, including any modification, clarification, extension, or successor agreement thereto (collectively referred to hereinafter as "the Arrangement"), the Secretary of Commerce is authorized to request the Secretary of the Treasury to take action pursuant to paragraph (2) of this subsection whenever he determines that—

(A) the level of exports of pipes and tubes to the United States from the European Communities is exceeding the average share of annual United States apparent consumption specified in the Arrangement, or

(B) distortion is occurring in the pattern of United States-European Communities trade within the pipe and tube sector taking into account the average share of annual United States apparent consumption accounted for by European Communities articles within product categories developed by the Secretary of Commerce.

Any request to the Secretary of the Treasury pursuant to this subsection by the Secretary of Commerce shall identify one or more categories of pipe and tube products with respect to which action under paragraph (2) is requested.

(2) At the request of the Secretary of Commerce pursuant to paragraph (1), the Secretary of the Treasury shall take such action as may be necessary to ensure that the aggregate quantity of European Communities articles in each product category identified by the Secretary of Commerce in such request that are entered into the United States are in accordance with the terms of the Arrangement.

(3) Nothing in this subsection may be construed as prohibiting the Secretary of Commerce from permitting the importation of additional quantities of specific products in cases where the Secretary determines that conditions of short supply or emergency economic situations related to market demand exist; except that a short supply or emergency economic situation shall not be considered to exist solely because domestic producers are unwilling to supply products at prices below their costs of production (as determined by the Secretary of Commerce).

(c) For purposes of carrying out this title, the Secretary of the Treasury may provide by regulation for the terms and conditions under which steel products may be denied entry into the United States.

SEC. 806. EFFECTIVE PERIOD OF TITLE.

(a) IN GENERAL.—Section 805 shall terminate—

(1) at the close of the fifth anniversary of the effective date of this title; or

(2) at the close of the first, second, third, or fourth anniversary of the effective date of this title, unless the President, before each such anniversary, submits to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (in writing and together with the reasons therefor) an affirmative annual determination described in subsection (b).

(b)(1) An affirmative annual determination is a determination by the President that—

(A) the major companies of the steel industry, taken as a whole, have, during the 12-month period ending at the close of an anniversary referred to in subsection (a)(2)—

(i) committed substantially all of their net cash flow from steel product operations for purposes of reinvestment in, and modernization of, that industry through investment in modern plant and equipment, research and development, and other appropriate projects, such as working capital for steel operations and programs for the retraining of workers; and

(ii) taken sufficient action to maintain their international competitiveness, including action to produce price-competitive and quality-competitive products, to control costs of production, including employment costs, and to improve productivity; and

(B) each of the major companies committed for the applicable 12-month period not less than 1 percent of net cash flow to the retraining of workers; except that this requirement may be waived by the President with respect to a major company in noncompliance, if he finds unusual economic circumstances exist with respect to that company; and

(C) the enforcement authority provided under section 805 remains necessary to maintain the effectiveness of bilateral arrangements undertaken to eliminate unfair trade practices in the steel sector.

(2) For purposes of this subsection—

(A) the term "major company" means an enterprise whose raw steel production in the United States during 1983 exceeded 1,500,000 net tons.

(B) The term "net cash flow" means annual net (after-tax) income plus depreciation, depletion allowances, amortization, and changes in reserves minus dividends and payments on short-term and long-term debts and liabilities.

(3) For purposes of carrying out this subsection, the President shall take into account such information as may be available from the United States International Trade Commission and other appropriate sources relating to the modernization efforts of the steel industry.

SEC. 807. DEPARTMENT OF LABOR WORKER ASSISTANCE PLAN.

Within 6 months after the effective date of this title, the Secretary of Labor shall prepare (in consultation with the Steel Advisory Committee established on November 3, 1983, by the Secretary of Commerce and the Secretary of Labor (48 F.R. 51165)) and submit to the Congress a proposed plan of action for assisting workers in communities that are adversely affected by imports of steel products; which assistance shall include retraining and relocation for former workers in the steel industry who will likely be unable to return to employment in that industry. The plan required under this section shall be based upon existing authorities for providing such assistance, but shall be accompanied by such recommendations for additional statutory authority as the Secretary of Labor considers necessary to carry out the purposes of the plan.

SEC. 808. EFFECTIVE DATE.

This title shall take effect on October 1, 1984.

C. NATIONAL SECURITY IMPORT RESTRICTIONS

Sections 232 and 233 of Trade Expansion Act of 1962, as amended

[19 U.S.C. 1862, 1864; P.L. 87-794, as amended by P.L. 93-618, Reorganization Plan No. 3 of 1979, P.L. 96-223, and added by P.L. 99-64]

SEC. 232. SAFEGUARDING NATIONAL SECURITY.

(a) No action shall be taken pursuant to section 201(a) or pursuant to section 350 of the Tariff Act of 1930 to decrease or eliminate the duty or other import restriction on any article if the President determines that such reduction or elimination would threaten to impair the national security.

(b) Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Secretary of Commerce (hereinafter referred to as the "Secretary") shall immediately make an appropriate investigation, in the course of which he shall seek information and advice from, and shall consult with, the Secretary of Defense and other appropriate officers of the United States, to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion. The Secretary shall, if it is appropriate and after reasonable notice, hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to such investigation. The Secretary shall report the findings of his investigation under this subsection with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, his recommendation for action or inaction under this section to the President within one year after receiving an application from an interested party or otherwise beginning an investigation under this subsection. If the Secretary finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall so advise the President and the President shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not threaten to impair the national security, unless the President determines that the article is not being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

(c) For the purposes of this section, the Secretary and the President shall, in the light of the requirements of national security and without excluding other relevant factors, give consideration to domestic production needed for projected national defense requirements, the capacity of domestic industries to meet such requirements, existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense, the requirements of growth of such industries and such supplies and services including the investment, exploration, and development necessary to assure such growth, and the importation of goods in terms of their quantities, availabilities, character, and use as those affect such industries and the capacity of the United States to meet national security requirements. In the administration of this section, the Secretary and the President shall further recognize the close relation of the economic welfare of the Nation to our national security, and shall take into consideration the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports shall be considered, without excluding other factors, in determining whether such weakening of our internal economy may impair the national security.

(d) A report shall be made and published upon the disposition of each request, application, or motion under subsection (b). The Secretary shall publish procedural regulations to give effect to the authority conferred on him by subsection (b).

(e)(1) An action taken by the President under subsection (b) to adjust imports of petroleum or petroleum products shall cease to have force and effect upon the enactment of a disapproval resolution, provided for in paragraph (2), relating to that action.

(2)(A) This paragraph is enacted by the Congress—

(i) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedures to be followed in that House in the case of disapproval resolutions and such procedures supersede other rules only to the extent that they are inconsistent therewith; and

(ii) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

(B) For purposes of this subsection, the term "disapproval resolution" means only a joint resolution of either House of Congress the matter after the resolving clause of which is as follows: "That the Congress disapproves the action taken under section 232 of the Trade Expansion Act of 1962 with respect to petroleum imports under ———— dated ————.", the first blank space being filled with the number of the proclamation, Executive order, or other Executive act issued under the authority of subsection (b) of such section 232 for purposes of adjusting imports of petroleum or petroleum products and the second blank being filled with the appropriate date.

(C)(i) All disapproval resolutions introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all disapproval resolutions introduced in the Senate shall be referred to the Committee on Finance.

(ii) No amendment to a disapproval resolution shall be in order in either the House of Representatives or the Senate, and no motion to suspend the application of this clause shall be in order in either House nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this clause by unanimous consent.

SEC. 233. IMPORT SANCTIONS FOR EXPORT VIOLATIONS.

(a) Any person who violates any national security export control imposed under section 5 of the Export Administration Act of 1979 (50 U.S.C. App. 2404), or any regulation, order, or license issued under that section, may be subject to such controls on the importing of goods or technology into the United States as the President may prescribe.

(b) Except as provided in subsection (a) of this section, any person who violates any regulation issued under a multilateral agreement, formal or informal, to control exports for national security purposes, to which the United States is a party, may be subject to such controls on the importing of goods or technology into the United States as the President may prescribe, but only if—

(1) negotiations with the government or governments, party to the multilateral agreement, with jurisdiction over the violation have been conducted and been unsuccessful in restoring compliance with the regulation involved;

(2) the President, after the failure of such negotiations, has notified the government or governments described in paragraph (1) and the other parties to the multilateral agreement that the United States proposes to subject the person committing the violation to specific controls on the importing of goods or technology into the United States upon the expiration of 60 days from the date of such notification; and

(3) a majority of the parties to the multilateral agreement (other than the United States), before the end of that 60-day period, have expressed to the President concurrence in the proposed import controls or have abstained from stating a position with respect to the proposed controls.

Section 127(c) of Trade Act of 1974

[19 U.S.C. 1863; P.L. 93-618]

SEC. 127. RESERVATION OF ARTICLES FOR NATIONAL SECURITY OR OTHER REASONS.

[(a), (b)—See "Trade Agreement Procedural Requirements."]

(c) The President shall submit to the Congress an annual report on section 232 of the Trade Expansion Act of 1962. Within 60 days after he takes any action under such section 232, the President shall report to the Congress the action taken and the reasons therefor.

D. BALANCE OF PAYMENTS AUTHORITY

Section 122 of Trade Act of 1974

[19 U.S.C. 2132; P.L. 93-618]

SEC. 122. BALANCE-OF-PAYMENTS AUTHORITY.

(a) Whenever fundamental international payments problems require special import measures to restrict imports—

(1) to deal with large and serious United States balance-of-payments deficits,

(2) to prevent an imminent and significant depreciation of the dollar in foreign exchange markets, or

(3) to cooperate with other countries in correcting an international balance-of-payments disequilibrium,

the President shall proclaim, for a period not exceeding 150 days (unless such period is extended by Act of Congress)—

(A) a temporary import surcharge, not to exceed 15 percent ad valorem, in the form of duties (in addition to those already imposed, if any) on articles imported into the United States;

(B) temporary limitations through the use of quotas on the importation of articles into the United States; or

(C) both a temporary import surcharge described in subparagraph (A) and temporary limitations described in subparagraph (B).

The authority delegated under subparagraph (B) (and so much of subparagraph (C) as relates to subparagraph (B)) may be exercised (i) only if international trade or monetary agreements to which the United States is a party permit the imposition of quotas a a balance-of-payments measure, and (ii) only to the extent that the fundamental imbalance cannot be dealt with effectively by a surcharge proclaimed pursuant to subparagraph (A) or (C). Any temporary import surcharge proclaimed pursuant to subparagraph (A) or (C) shall be treated as a regular customs duty.

(b) If the President determines that the imposition of import restrictions under subsection (a) will be contrary to the national interest of the United States, then he may refrain from proclaiming such restrictions and he shall—

(1) immediately inform Congress of his determination, and

(2) immediately convene the group of congressional official advisers designated under section 161(a) and consult with them as to the reasons for such determination.

(c) Whenever the President determines that fundamental international payments problems require special import measures to increase imports—

(1) to deal with large and persistent United States balance-of-trade surpluses, as determined on the basis of the cost-insur-

ance-freight value of imports, as reported by the Bureau of the Census, or

(2) to prevent significant appreciation of the dollar in foreign exchange markets.

the President is authorized to proclaim, for a period of 150 days (unless such period is extended by Act of Congress)—

(A) a temporary reduction (of not more than 5 percent ad valorem) in the rate of duty on any article; and

(B) a temporary increase in the value or quantity of articles which may be imported under any import restriction, or a temporary suspension of any import restriction.

Import liberalizing actions proclaimed pursuant to this subsection shall be of broad and uniform application with respect to product coverage except that the President shall not proclaim measures under this subsection with respect to those articles where in his judgment such action will cause or contribute to material injury to firms or workers in any domestic industry, including agriculture, mining, fishing, or commerce, or to impairment of the national security, or will otherwise be contrary to the national interest.

(d)(1) Import restricting actions proclaimed pursuant to subsection (a) shall be applied consistently with the principle of nondiscriminatory treatment. In addition, any quota proclaimed pursuant to subparagraph (B) of subsection (a) shall be applied on a basis which aims at a distribution of trade with the United States approaching as closely as possible that which various foreign countries might have expected to obtain in the absence of such restrictions.

(2) Notwithstanding paragraph (1), if the President determines that the purposes of this section will best be served by action against one or more countries having large or persistent balance-of-payments surpluses, he may exempt all other countries from such action.

(3) After such time when there enters into force for the United States new rules regarding the application of surcharges as part of a reform of internationally agreed balance-of-payments adjustment procedures, the exemption authority contained in paragraph (2) shall be applied consistently with such new international rules.

(4) It is the sense of Congress that the President seek modifications in international agreements aimed at allowing the use of surcharges in place of quantitative restrictions (and providing rules to govern the use of such surcharges) as a balance-of-payments adjustment measure within the context of arrangements for an equitable sharing of balance-of-payments adjustment responsibility among deficit and surplus countries.

(e) Import restricting actions proclaimed pursuant to subsection (a) shall be of broad and uniform application with respect to product coverage except where the President determines, consistently with the purposes of this section, that certain articles should not be subject to import restricting actions because of the needs of the United States economy. Such exceptions shall be limited to the unavailability of domestic supply at reasonable prices, the necessary importation of raw materials, avoiding serious dislocations in the supply of imported goods, and other similar factors. In addition, uniform exceptions may be made where import restricting actions will be unnecessary or ineffective in carrying out the purposes of this section, such as with respect to articles already subject to import restrictions, goods in transit, or goods under binding contract. Neither the authorization of import restricting actions nor the determination of exceptions with respect to product coverage shall be made for the purpose of protecting individual domestic industries from import competition.

(f) Any quantitative limitation proclaimed pursuant to subparagraph (B) or (C) of subsection (a) on the quantity or value, or both, of an article—

(1) shall permit the importation of a quantity or value which is not less than the quantity or value of such article imported into the United States from the foreign countries to which such limitation applies during the most recent period which the President determines is representative of imports of such article, and

(2) shall take into account any increase since the end of such representative period in domestic consumption of such article and like or similar articles of domestic manufacture or production.

(g) The President may at any time, consistent with the provisions of this section, suspend, modify, or terminate, in whole or in part, any proclamation under this section either during the initial 150-day period of effectiveness or as extended by subsequent Act of Congress.

(h) No provision of law authorizing the termination of tariff concessions shall be used to impose a surcharge on imports into the United States.

E. PRODUCT STANDARDS

Implementation of the GATT Agreement on Technical Barriers to Trade

Title IV of Trade Agreements Act of 1979

[19 U.S.C. 2531; P.L. 96–39]

Subtitle A—Obligations of the United States

SEC. 401. CERTAIN STANDARDS-RELATED ACTIVITIES.

Nothing in this title may be construed as prohibiting any private person, Federal agency, or State agency from engaging in standards-related activities that do not create unnecessary obstacles to the foreign commerce of the United States. No standards-related activity of any private person, Federal agency, or State agency shall be deemed to constitute an unnecessary obstacle to the foreign commerce of the United States if the demonstrable purpose of the standards-related activity is to achieve a legitimate domestic objective including, but not limited to, the protection of legitimate health or safety, essential security, environmental, or consumer interests and if such activity does not operate to exclude imported products which fully meet the objectives of such activity.

SEC. 402. FEDERAL STANDARDS-RELATED ACTIVITIES.

No Federal agency may engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States, including, but not limited to, standards-related activities that violate any of the following requirements:

(1) NONDISCRIMINATORY TREATMENT.—Each Federal agency shall ensure, in applying standards-related activities with respect to any imported product, that such product is treated no less favorably than are like domestic or imported products, including, but not limited to, when applying tests or test methods, no less favorable treatment with respect to—

(A) the acceptance of the product for testing in comparable situations;

(B) the administration of the tests in comparable situations;

(C) the fees charged for tests;

(D) the release of test results to the exporter, importer, or agents;

(E) the siting of testing facilities and the selection of samples for testing; and

(F) the treatment of confidential information pertaining to the product.

(2) USE OF INTERNATIONAL STANDARDS.—

(A) IN GENERAL.—Except as provided in subparagraph (B)(ii), each Federal agency, in developing standards, shall take into consideration international standards and shall, if appropriate, base the standards on international standards.

(B) APPLICATION OF REQUIREMENT.—For purposes of this paragraph, the following apply:

(i) INTERNATIONAL STANDARDS NOT APPROPRIATE.—The reasons for which the basing of a standard on an international standard may not be appropriate include, but are not limited to, the following:

(I) National security requirements.

(II) The prevention of deceptive practices.

(III) The protection of human health or safety, animal or plant life or health, or the environment.

(IV) Fundamental climatic or other geographical factors.

(V) Fundamental technological problems.

(ii) REGIONAL STANDARDS.—In developing standards, a Federal agency may, but is not required to, take into consideration any international standard promulgated by an international standards organization the membership of which is described in section 451(6)(A)(ii).

(3) PERFORMANCE CRITERIA.—Each Federal agency shall, if appropriate, develop standards based on performance criteria, such as those relating to the intended use of a product and the level of performance that the product must achieve under defined conditions, rather than on design criteria, such as those relating to the physical form of the product or the types of material of which the product is made.

(4) CERTIFICATION ACCESS FOR FOREIGN SUPPLIERS.—Each Federal agency shall, with respect to any certification system used by it, permit access for obtaining certification under that system to foreign suppliers of a product on the same basis as access is permitted to suppliers of like products, whether of domestic or other foreign origin.

SEC. 403. STATE AND PRIVATE STANDARDS-RELATED ACTIVITIES.

(a) IN GENERAL.—It is the sense of the Congress that no State agency and no private person should engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States.

(b) PRESIDENTIAL ACTION.—The President shall take such reasonable measures as may be available to promote the observance by State agencies and private persons, in carrying out standards-related activities, of requirements equivalent to those imposed on Federal agencies under section 402, and of procedures that provide for notification, participation, and publication with respect to such activities.

Subtitle B—Functions of Federal Agencies

(a) IN GENERAL.—The Special Representative shall coordinate the consideration of international trade policy issues that arise as a result of, and shall develop international trade policy as it relates to, the implementation of this title.

(b) NEGOTIATING FUNCTIONS.—The Special Representative has responsibility for coordinating United States discussions and negotiations with foreign countries for the purpose of establishing mutual arrangements with respect to standards-related activities. In carrying out this responsibility, the Special Representative shall inform and consult with any Federal agency having expertise in the matters under discussion and negotiation.

(c) CROSS REFERENCE.—For provisions of law regarding general authority of the Special Representative with respect to trade agreements, see section 141 of the Trade Act of 1974 (19 U.S.C. 2171).

SEC. 412. ESTABLISHMENT AND OPERATION OF TECHNICAL OFFICES.

(a) ESTABLISHMENT.—

(1) FOR NONAGRICULTURAL PRODUCTS.—The Secretary of Commerce shall establish and maintain within the Department of Commerce a technical office that shall carry out the functions prescribed under subsection (b) with respect to nonagricultural products.

(2) FOR AGRICULTURAL PRODUCTS.—The Secretary of Agriculture shall establish and maintain within the Department of Agriculture a technical office that shall carry out the functions prescribed under subsection (b) with respect to agricultural products.

(b) FUNCTIONS OF OFFICES.—The President shall prescribe for each technical office established under subsection (a) such functions as the President deems necessary or appropriate to implement this title.

SEC. 413. REPRESENTATION OF UNITED STATES INTERESTS BEFORE INTERNATIONAL STANDARDS ORGANIZATIONS.

(a) OVERSIGHT AND CONSULTATION.—The Secretary concerned shall—

(1) inform, and consult and coordinate with, the Special Representative with respect to international standard-related activities identified under paragraph (2);

(2) keep adequately informed regarding international standards-related activities and identify those that may substantially affect the commerce of the United States; and

(3) carry out such functions as are required under subsections (b) and (c).

(b) REPRESENTATION OF UNITED STATES INTERESTS BY PRIVATE PERSONS.—

(1) DEFINITIONS.—For purposes of this subsection—

(A) ORGANIZATION MEMBER.—The term "organization member" means the private person who holds membership in a private international standards organization.

(B) PRIVATE INTERNATIONAL STANDARDS ORGANIZATION.—The term "private international standards organization" means any international standards organization before which the interests of the United States are represented by a private person who is officially recognized by that organization for such purposes.

(2) In general.—Except as otherwise provided for in this subsection, the representation of United States interests before any private international standards organization shall be carried out by the organization member.

(3) Inadequate representation.—If the Secretary concerned, after inquiry instituted on his own motion or at the request of any private person, Federal agency, or State agency having an interest therein, has reason to believe that the participation by the organization member in the proceedings of a private international standards organization will not result in the adequate representation of United States interests that are, or may be, affected by the activities of such organization (particularly with regard to the potential impact of any such activity on the international trade of the United States), the Secretary concerned shall immediately notify the organization member concerned. During any such inquiry, the Secretary concerned may solicit and consider the advice of the appropriate representatives referred to in section 417.

(4) Action by organization member.—If within the 90-day period after the date on which notification is received under paragraph (3) (or such shorter period as the Secretary concerned determines to be necessary in extraordinary circumstances), the organization member demonstrates to the Secretary concerned its willingness and ability to represent adequately United States interests before the private international standards organization, the Secretary concerned shall take no further action under this subsection.

(5) Action by secretary concerned.—If—

(A) within the appropriate period referred to in paragraph (4), the organization member does not respond to the Secretary concerned with respect to the notification, or does respond but does not demonstrate to the Secretary concerned the requisite willingness and ability to represent adequately United States interests; or

(B) there is no organization member of the private international standards organization;

the Secretary concerned shall make appropriate arrangements to provide for the adequate representation of United States interests. In cases where subparagraph (A) applies, such provision shall be made by the Secretary concerned through the appropriate organization member if the private international standards organization involved requires representation by that member.

(c) Representation of United States Interests by Federal Agencies.—With respect to any international standards organization before which the interests of the United States are represented by one or more Federal agencies that are officially recognized by that organization for such purpose, the Secretary concerned shall—

(1) encourage cooperation among interested Federal agencies with a view toward facilitating the development of a uniform position with respect to the technical activities with which the organization is concerned;

(2) encourage such Federal agencies to seek information from, and to cooperate with, the affected domestic interests when undertaking such representation; and

(3) not preempt the responsibilities of any Federal agency that has jurisdiction with respect to the activities undertaken by such organization, unless requested to do so by such agency.

SEC. 414. STANDARDS INFORMATION CENTER.

(a) ESTABLISHMENT.—The Secretary of Commerce shall maintain within the Department of Commerce a standards information center.

(b) FUNCTIONS.—The standards information center shall—

(1) serve as the central national collection facility for information relating to standards, certification systems, and standards-related activities, whether such standards, systems, or activities are public or private, domestic or foreign, or international, regional, national, or local;

(2) make available to the public at such reasonable fee as the Secretary shall prescribe, copies of information required to be collected under paragraph (1) other than information to which paragraph (3) applies;

(3) use its best efforts to make available to the public, at such reasonable fees as the Secretary shall prescribe, copies of information required to be collected under paragraph (1) that is of private origin, on a cooperative basis with the private individual or entity, foreign or domestic, who holds the copyright on the information;

(4) in case of such information that is of foreign origin, provide, at such reasonable fee as the Secretary shall prescribe, such translation services as may be necessary;

(5) serve as the inquiry point for requests for information regarding standards-related activities, whether adopted or proposed, within the United States, except that in carrying out this paragraph, the Secretary of Commerce shall refer all inquiries regarding agricultural products to the technical office established under section 412(a)(2) within the Department of Agriculture; and

(6) provide such other services as may be appropriate, including but not limited to, such services to the technical offices established under section 412 as may be requested by those offices in carrying out their functions.

SEC. 415. CONTRACTS AND GRANTS.

(a) IN GENERAL.—For purposes of carrying out this title, and otherwise encouraging compliance with the Agreement, the Special Representative and the Secretary concerned may each, with respect to functions for which responsible under this title, make grants to, or enter into contracts with, any other Federal agency, any State agency, or any private person, to assist such agency or person to implement appropriate programs and activities, including, but not limited to, programs and activities—

(1) to increase awareness of proposed and adopted standards-related activities;

(2) to facilitate international trade through the appropriate international and domestic standards-related activities;

(3) to provide, if appropriate, and pursuant to section 413, adequate United States representation in international standards-related activities; and

(4) to encourage United States exports through increased awareness of foreign standards-related activities that may affect United States exports.

No contract entered into under this section shall be effective except to such extent, and in such amount, as is provided in advance in appropriation Acts.

(b) Terms and Conditions.—Any contract entered into, or any grant made, under subsection (a) shall be subject to such terms and conditions as the Special Representative or Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States.

(c) Limitations.—Financial assistance extended under this section shall not exceed 75 percent of the total costs (as established by the Special Representative or Secretary concerned, as the case may be) of the program or activity for which assistance is made available. The non-Federal share of such costs shall be made in cash or kind, consistent with the maintenance of the program or activity concerned.

(d) Audit.—Each recipient of a grant or contract under this section shall make available to the Special Representative or the Secretary concerned, as the case may be, and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper, and record that is pertinent to the funds received under such grant or contract.

SEC. 416. TECHNICAL ASSISTANCE.

The Special Representative and the Secretary concerned may each, with respect to functions for which responsible under this title, make available, on a reimbursable basis or otherwise, to any other Federal agency, State agency, or private person such assistance, including, but not limited to, employees, services, and facilities, as may be appropriate to assist such agency or person in carrying out standards-related activities in a manner consistent with this title.

SEC. 417. CONSULTATIONS WITH REPRESENTATIVES OF DOMESTIC INTERESTS.

In carrying out the functions for which responsible under this title, the Special Representative and the Secretary concerned shall solicit technical and policy advice from the committees, established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155), that represent the interests concerned, and may solicit advice from appropriate State agencies and private persons.

Subtitle C—Administrative and Judicial Proceedings Regarding Standards-Related Activities

CHAPTER 1—REPRESENTATIONS ALLEGING UNITED STATES VIOLATIONS OF OBLIGATIONS

SEC. 421. RIGHT OF ACTION UNDER THIS CHAPTER.

Except as provided under this chapter, the provisions of this subtitle do not create any right of action under the laws of the United

States with respect to allegations that any standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement.

SEC. 422. REPRESENTATIONS.

Any—

(1) Party to the Agreement; or

(2) foreign country that is not a Party to the Agreement but is found by the Special Representative to extend rights and privileges to the United States that are substantially the same as those that would be so extended if that foreign country were a Party to the Agreement;

may make a representation to the Special Representative alleging that a standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement. Any such representation must be made in accordance with procedures that the Special Representative shall by regulation prescribe and must provide a reasonable indication that the standards-related activity concerned is having a significant trade effect. No person other than a Party to the Agreement or a foreign country described in paragraph (2) may make such a representation.

SEC. 423. ACTION AFTER RECEIPT OF REPRESENTATIONS.

(a) Review.—Upon receipt of any representation made under section 422, the Special Representative shall review the issues concerned in consultation with—

(1) the agency or person alleged to be engaging in violations under the Agreement;

(2) the member agencies of the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a));

(3) other appropriate Federal agencies; and

(4) appropriate representatives referred to in section 417.

(b) Resolution.—The Special Representative shall undertake to resolve, on a mutually satisfactory basis, the issues set forth in the representation through consultation with the parties concerned.

SEC. 424. PROCEDURE AFTER FINDING BY INTERNATIONAL FORUM.

(a) In General.—If an appropriate international forum finds that a standards-related activity being engaged in within the United States conflicts with the obligations of the United States under the Agreement, the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) shall review the finding and the matters related thereto with a view to recommending appropriate action.

(b) Cross Reference.—For provisions of law regarding remedies available to domestic persons alleging that standards activities engaged in by Parties to the Agreement (other than the United States) violate the obligations of the Agreement, see section 301 of the Trade Act of 1974 (19 U.S.C. 2411).

CHAPTER 2—OTHER PROCEEDINGS REGARDING CERTAIN STANDARDS-RELATED ACTIVITIES

SEC. 441. FINDINGS OF RECIPROCITY REQUIRED IN ADMINISTRATIVE PROCEEDINGS.

(a) IN GENERAL.—Except as provided under chapter 1, no Federal agency may consider a complaint or petition against any standards-related activity regarding an imported product, if that activity is engaged in within the United States and is covered by the Agreement, unless the Special Representative finds, and informs the agency concerned in writing, that—

(1) the country of origin of the imported product is a Party to the Agreement or a foreign country described in section 422(2); and

(2) the dispute settlement procedures provided under the Agreement are not appropriate.

(b) EXEMPTIONS.—This section does not apply with respect to causes of action arising under—

(1) the antitrust laws as defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)); or

(2) statues administered by the Secretary of Agriculture.

This section does not apply with respect to petitions and proceedings that are provided for under the practices of any Federal agency for the purpose of ensuring, in accordance with section 553 of title 5, United States Code, that interested persons are given an opportunity to participate in agency rulemaking or to seek the issuance, amendment, or repeal of a rule.

SEC. 442. NOT CAUSE FOR STAY IN CERTAIN CIRCUMSTANCES.

No standards-related activity being engaged in within the United States may be stayed in any judicial or administrative proceeding on the basis that such activity is currently being considered, pursuant to the Agreement, by an international forum.

Subtitle D—Definitions and Miscellaneous Provisions

SEC. 451. DEFINITIONS

As used in this title—

(1) AGREEMENT.—The term "Agreement" means the Agreement on Technical Barriers to Trade approved under section 2(a) of this Act.

(2) CERTIFICATION SYSTEM.—The term "certification system" means a system—

(A) for determining whether a product conforms with product standards applicable to that product; and

(B) if a product so conforms, for attesting, by means of a document, mark, or other appropriate evidence of conformity, to that conformity.

Such term also includes any modification of, or change to, any such system.

(3) FEDERAL AGENCY.—The term "Federal agency" means any of the following within the meaning of chapter 2 of part I of title 5, United States Code:

(A) Any executive department.

(B) Any military department.

(C) Any Government corporation.

(D) Any Government-controlled corporation.

(E) Any independent establishment.

(4) INTERNATIONAL CERTIFICATION SYSTEM.—The term "international certification system" means a certification system that is adopted by an international standards organization.

(5) INTERNATIONAL STANDARD.—The term "international standard" means any standard that is promulgated by an international standards organization.

(6) INTERNATIONAL STANDARDS ORGANIZATION.—The term "international standards organization" means any organization—

(A) the membership of which is open to representatives, whether public or private, of the United States and—

(i) all Parties to the Agreement, or

(ii) some but not all Parties of the Agreement; and

(B) that is engaged in international standards-related activities.

(7) INTERNATIONAL STANDARDS-RELATED ACTIVITY.—The term "international standards-related activity" means the negotiation, development, or promulgation of, or any amendment or change to, an international standard, or an international certification system, or both.

(8) PARTY TO THE AGREEMENT.—The term "Party to the Agreement" means any foreign country or instrumentality determined by the President to have assumed, and to be applying, the obligations of the Agreement with respect to the United States.

(9) PRIVATE PERSON.—The term "private person" means—

(A) any individual who is a citizen or national of the United States; and

(B) any corporation, partnership, association, or other legal entity organized or existing under the law of any State, whether for profit or not for profit.

(10) PRODUCT.—The term "product" means any natural or manufactured item.

(11) SECRETARY CONCERNED.—The term "Secretary concerned" means the Secretary of Commerce with respect to functions under this title relating to nonagricultural products, and the Secretary of Agriculture with respect to functions under this title relating to agricultural products.

(12) SPECIAL REPRESENTATIVE.—The term "Special Representative" means the Special Representative for Trade Negotiations.

(13) STANDARD.—The term "standard" means any of the following, and any amendment or change to any of the following:

(A) The specification of the characteristics of a product, including, but not limited to, levels of quality, performance, safety, or dimensions.

(B) Specifications relating to the terminology, symbols, testing and test methods, packaging, or marking or labeling requirements applicable to a product.

(C) Administrative procedures related to the application of any specification referred to in paragraph (A) or (B),

(14) STANDARDS-RELATED ACTIVITY.—The term "standards-related activity" means the development, adoption, or application of any standard or any cerification system.

(15) STATE.—The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam and any other Commonwealth, territory, or possession of the United States.

(16) STATE AGENCY—The term "State agency" means any department, agency, or other instrumentality of the government of any State or of any political subdivision of any State.

(17) UNITED STATES.—The term "United States", when used in a geographical context, means all States.

SEC. 452. EXEMPTIONS UNDER TITLE.

This title does not apply to—

(1) any standards activity engaged in by any Federal agency or State agency for the use (including, but not limited to, use with respect to research and development, production, or consumption) of that agency or the use of another such agency; or

(2) any standards activity engaged in by any private person solely for use in the production or consumption of products by that person.

SEC. 453. REPORTS TO CONGRESS ON OPERATION OF AGREEMENT

As soon as practicable after the close of the 3-year period beginning on the date on which this title takes effect, and as soon as practicable after the close of each succeeding 3-year period, the Special Representative shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement, both domestically and internationally, during the period.

SEC. 454. EFFECTIVE DATE.

This title shall take effect on January 1, 1980, if the Agreement enters into force with respect to the United States by that date.

F. GOVERNMENT PROCUREMENT

Buy American Act (Act of March 3, 1933)

[41 U.S.C. 10a–d; P.L. 72–428]

SEC. 10a. AMERICAN MATERIALS REQUIRED FOR PUBLIC USE.

Notwithstanding any other provision of law, and unless the head of the department or independent establishment concerned shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, shall be acquired for public use. This section shall not apply with respect to articles, materials, or supplies for use outside the United States, or if articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

SEC. 10b. CONTRACTS FOR PUBLIC WORKS; SPECIFICATION FOR USE OF AMERICAN MATERIALS; BLACKLISTING CONTRACTORS VIOLATING REQUIREMENTS.

(a) Every contract for the construction, alteration, or repair of any public building or public work in the United States growing out of an appropriation heretofore made or hereafter to be made shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States except as provided in section 10a of this title: *Provided, however,* That if the head of the department or independent establishment making the contract shall find that in respect to some particular articles, materials, or supplies it is impracticable to make such requirement or that it would unreasonably increase the cost, an exception shall be noted in the specifications as to that particular article, material, or supply, and a public record made of the findings which justified the exception.

(b) If the head of a department, bureau, agency, or independent establishment which has made any contract containing the provision required by subsection (a) of this section finds that in the performance of such contract there has been a failure to comply with such provisions, he shall make public his findings, including therein the name of the contractor obligated under such contract, and no other contract for the construction, alteration, or repair of any public building or public work in the United States or elsewhere shall be awarded to such contractor, subcontractors, material men, or suppliers with which such contractor is associated or affiliated, within a period of three years after such finding is made public.

SEC. 10c. DEFINITION OF TERMS USED IN SECTIONS 10a AND 10b.

When used in sections 10a and 10b of this title—

(a) The term "United States", when used in a geographical sense, includes the United States and any place subject to the jurisdiction thereof;

(b) The terms "public use", "public building", and "public work" shall mean use by, public building of, and public work of, the United States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, and the Virgin Islands.

SEC. 10d. CLARIFICATION OF CONGRESSIONAL INTENT REGARDING SECTIONS 10a AND 10b(a).

In order to clarify the original intent of Congress, hereafter, section 10a of this title and that part of section 10b (a) of this title preceding the words "*Provided, however,*" shall be regarded as requiring the purchase, for public use within the United States, of articles, materials, or supplies manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, unless the head of the department or independent establishment concerned shall determine their purchase to be inconsistent with the public interest or their cost to be unreasonable.

EXECUTIVE ORDER NO. 10582

[Dec. 17, 1954, 19 F.R. 8723, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683.]

UNIFORM PROCEDURES FOR DETERMINATIONS

SECTION 1. As used in this order, (a) the term "materials" includes articles and supplies, (b) the term "executive agency" includes executive department, independent establishment, and other instrumentality of the executive branch of the Government, and (c) the term "bid or offered price of materials of foreign origin" means the bid or offered price of such materials delivered at the place specified in the invitation to bid including applicable duty and all costs incurred after arrival in the United States.

SEC. 2. (a) For the purposes of this order materials shall be considered to be of foreign origin if the cost of the foreign products used in such materials constitutes fifty per centum or more of the cost of all the products used in such materials.

(b) For the purposes of the said act of March 3, 1933 [sections 10a—10c of this title], and the other laws referred to in the first paragraph of the preamble of this order, the bid or offered price of materials of domestic origin shall be deemed to be unreasonable, or the purchase of such materials shall be deemed to be inconsistent with the public interest, if the bid or offered price thereof exceeds the sum of the bid or offered price of like materials of foreign origin and a differential computed as provided in subsection (c) of this section.

(c) The executive agency concerned shall in each instance determine the amount of the differential referred to in subsection (b) of this section on the basis of one of the following-described formulas, subject to the terms thereof:

(1) The sum determined by computing six per centum of the bid or offered price of materials of foreign origin.

(2) The sum determined by computing ten per centum of the bid or offered price of materials of foreign origin exclusive of applicable duty and all costs incurred after arrival in the United States: provided that when the bid or offered price of materials of foreign origin amounts to less than $25,000, the sum shall be determined by computing ten per centum of such price exclusive only of applicable duty.

SEC. 3. Nothing in this order shall affect the authority or responsibility of an executive agency:

(a) To reject any bid or offer for reasons of the national interest not described or referred to in this order; or

(b) To place a fair proportion of the total purchases with small business concerns in accordance with section 302 (b) of the Federal Property and Administrative Services Act of 1949, as amended [section 252 (b) of this title], section 2 (b) of the Armed Services Procurement Act of 1947, as amended [former section 151 (b) of this title], and section 202 of the Small Business Act of 1953 [section 631 of Title 15]; or

(c) To reject a bid or offer to furnish material of foreign origin in any situation in which the domestic supplier offering the lowest price for furnishing the desired materials undertakes to produce substantially all of such materials in areas of substantial unemployment, as determined by the Secretary of Labor in accordance with such appropriate regulations as he may establish and during such period as the President may determine that it is in the national interest to provide to such areas preference in the award of Government contracts:

Provided, that nothing in this section shall prevent the rejection of a bid or offered price which is excessive; or

(d) To reject any bid or offer for materials of foreign origin if such rejection is necessary to protect essential national-security interests after receiving advice with respect thereto from the President or from the Director of the Office of Emergency Planning [now Office of Emergency Preparedness]. In providing this advice the Director shall be governed by the principle that exceptions under this section shall be made only upon a clear showing that the payment of a greater differential than the procedures of this section generally prescribe is justified by consideration of national security.

SEC. 4. The head of each executive agency shall issue such regulations as may be necessary to insure that procurement practices under his jurisdiction conform to the provisions of this order.

SEC. 5. This order shall apply only to contracts entered into after the date hereof. In any case in which the head of an executive agency proposing to purchase domestic materials determines that a greater differential than that provided in this order between the cost of such materials of domestic origin and materials of foreign origin is not unreasonable or that the purchase of materials of domestic origin is not inconsistent with the public interest, this order shall not apply. A written report of the facts of each case in which such a determination is made shall be submitted to the President through the Director of the Bureau of the Budget [now Office of Management and Budget] by the official making the determination within 30 days thereafter.

DWIGHT D. EISENHOWER.

Implementation of the GATT Agreement on Government Procurement

Title III of Trade Agreements Act of 1979, as amended

[19 U.S.C. 2511; P.L. 96-39, as amended by Reorganization Plan No. 3 of 1979, and P.L. 99-47]

SEC. 301. GENERAL AUTHORITY TO MODIFY DISCRIMINATORY PURCHASING REQUIREMENTS.

(a) PRESIDENTAL WAIVER OF DISCRIMINATORY PURCHASING REQUIREMENTS.—The President may waive, in whole or in part, with respect to eligible products of any foreign country or instrumentality designated under subsection (b), and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(1) to United States products and suppliers of such products; or

(2) to eligible products of another foreign country or instrumentality which is a party to the Agreement and suppliers of such products.

(b) DESIGNATION OF ELIGIBLE COUNTRIES AND INSTRUMENTALITIES.—The President may designate a foreign country or instrumentality for purposes of subsection (a) only if he determines that such country or instrumentality—

(1) is a country or instrumentality which (A) has become a party to the Agreement, and (B) will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products;

(2) is a country or instrumentality, other than a major industrial country, which (A) will otherwise assume the obligations of the Agreement, and (B) will provide such opportunities to such products and suppliers;

(3) is a country or instrumentality, other than a major industrial country, which will provide such opportunities to such products and suppliers; or

(4) is a least developed country.

(c) MODIFICATION OR WITHDRAWAL OF WAIVERS AND DESIGNATIONS.—The President may modify or withdraw any waiver granted pursuant to subsection (a) or designation made pursuant to subsection (b).

SEC. 302. AUTHORITY TO ENCOURAGE RECIPROCAL COMPETITIVE PROCUREMENT PRACTICES.

(a) Authority to Bar Procurement from Non-Designated Countries.—With respect to procurement covered by the Agreement, the President, in order to encourage additional countries to become parties to the Agreement and to provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products—

(1) shall prohibit the procurement, after the date on which any waiver under section 301(a) first takes effect, of products (A) which are products of a foreign country or instrumentality which is not designated pursuant to section 301(b), and (B) which would otherwise be eligible products; and

(2) may take such other actions within his authority as he deems necessary.

(b) Deferrals and Waivers.—Notwithstanding subsection (a), but in furtherance of the objective of encouraging countries to become parties to the Agreement and provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products, the President may—

(1) delay, for a period not to exceed two years, the prohibition of procurement, required pursuant to subsection (a)(1), of products of a foreign country or instrumentality which is not designated pursuant to section 301(b), except that no such delay shall be granted with respect to the procurement of products of any major industrial country;

(2) authorize agency heads to waive, subject to interagency review and general policy guidance by the organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)), such prohibition on a case-by-case basis when in the national interest; and

(3) authorize the Secretary of Defense to waive, subject to interagency review and policy guidance by the organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)), such prohibition for products of any country or instrumentality which enters into a reciprocal procurement agreement with the Department of Defense.

(c) Report on Impact of Restrictions.—

(1) Impact on the economy.—On or before July 1, 1981, the President shall report to the Committee on Ways and Means and the Committee on Government Operations of the House of Representatives and to the Committee on Finance and the Committee on Governmental Affairs of the Senate on the effects on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget) of the refusal of developed countries to allow the Agreement to cover the entities of the governments of such countries which are the principal purchasers of goods and equipment in appropriate product sectors.

(2) Recommendations for attaining reciprocity.—The report required by paragraph (1) shall include an evaluation of alternative means to obtain equity and reciprocity in such

product sectors, including (A) prohibiting the procurement of products of such countries by United States entities not covered by the Agreement, and (B) modifying the application of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the Buy American Act. The report shall include an analysis of the effect of such alternative means on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget), and on successful negotiations on the expansion of the coverage of the Agreement pursuant to section 304 (a) and (b), other trade negotiating objectives, the relationship of the Federal Government to State and local governments, and such other factors as the President deems appropriate.

(3) Consultation.—In the preparation of the report required by paragraph (1) and the evaluation and analysis required by paragraph (2), the President shall consult with representatives of the public, industry, and labor, and make available pertinent, nonconfidential information obtained in the course of such preparation to the advisory committees established pursuant to section 135 of the Trade Act of 1974.

(d) Proposed Action.—

(1) Presidential report.—On or before October 1, 1981, the President shall prepare and transmit to the congressional committees referred to in subsection (c)(1) a report which describes the actions he deems appropriate to establish reciprocity with major industrialized countries in the area of Government procurement.

(2) Procedure.—

(A) Presidential determination.—If the President determines that any changes in existing law or new statutory authority are required to authorize or to implement any action proposed in the report submitted under paragraph (1), he shall, on or after January 1, 1982, submit to the Congress a bill to accomplish such changes or provide such new statutory authority. Prior to submitting such a bill, the President shall consult with the appropriate committees of the Congress having jurisdiction over legislation involving subject matters which would be affected by such action, and shall submit to such committees a proposed draft of such bill.

(B) Congressional consideration.—The appropriate committee of each House of the Congress shall give a bill submitted pursuant to subparagraph (A) prompt consideration and shall make its best efforts to take final committee action on such bill in an expeditious manner.

SEC. 303. WAIVER OF DISCRIMINATORY PURCHASING REQUIREMENTS WITH RESPECT TO PURCHASES OF CIVIL AIRCRAFT.

The President may waive the application of the provisions of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), popularly referred to as the Buy American Act, in the case of any procurement of civil aircraft and related articles of a country or instrumentality which is a party to the Agreement on Trade in Civil Aircraft. The President may modify or withdraw any waiver granted pursuant to this section.

SEC. 304. EXPANSION OF THE COVERAGE OF THE AGREEMENT.

(a) Overall Negotiating Objective.—The President shall seek in the renegotiatons provided for in part IX, paragraph 6, of the Agreement more open and equitable market access abroad, and the harmonization, reduction, or elimination of devices which distort trade or commerce related to Government procurement, with the overall goal of maximizing the economic benefit to the United States through maintaining and enlarging foreign markets for products of United States agriculture, industry, mining, and commerce, the development of fair and equitable market opportunities, and open and nondiscriminatory world trade. In carrying out the provisions of this subsection, the President shall consider the assessment made in the report required under section 306(a).

(b) Sector Negotiating Objectives.—The President shall seek, consistent with the overall objective set forth in subsection (a) and to the maximum extent feasible, with respect to appropriate product sectors, competitive opportunities for the export of United States products to the developed countries of the world equivalent to the competitive opportunities afforded by the United States, taking into account all barriers to, and other distortions of, international trade affecting that sector.

(c) Independent Verification Objective.—The President shall seek to establish in the renegotiation provided for in part IX, paragraph 6, of the Agreement a system for independent verification of information provided by parties to the Agreement to the Committee on Government Procurement pursuant to part VI, paragraph 9, of the Agreement.

(d) Reports on Negotiations.—

(1) Report in the event of inadequate progress.—If, during the renegotiations of the Agreement, the President at any time determines that the renegotiations are not progressing satisfactorily and are not likely to result, within twelve months of the commencement thereof, in an expansion of the Agreement to cover purchases by the entities of the governments of developed countries which are the principal purchasers of goods and equipment in appropriate product sectors, he shall so report to the congressional committees referred to in section 302(c)(1). Taking into account the objectives set forth in subsections (a) and (b) of this section and the factors required to be analyzed under section 302(c), the President shall further report to such committees appropriate actions to seek reciprocity in such product sectors with such countries in the area of government procurement.

(2) Legislative recommendations.—Taking into account the factors required to be analyzed under section 302(c), the President may recommend to the Congress legislation (with respect to entities of the Government which are not covered by the Agreement) which may prohibit such entities from purchasing products of such countries.

(3) Annual reports.—Each annual report of the President under section 163(a) of the Trade Act of 1974 made after the

date of enactment of this Act shall report the actions, if any, the President deemed appropriate to establish reciprocity in appropriate product sectors with major industrial countries in the area of government procurement.

(e) EXTENSION OF NONDISCRIMINATION AND NATIONAL TREATMENT.—Before exercising the waiver authority in section 301 for procurement not covered by the Agreement on the date of enactment of this Act, the President shall follow the consultation provisions of section 135 and chapter 6 of title I of the Trade Act of 1974 for private sector and congressional consultations.

SEC. 305. MONITORING AND ENFORCEMENT.

(a) MONITORING AND ENFORCEMENT STRUCTURE RECOMMENDATIONS.—In the preparation of the recommendations for the reorganization of trade functions, the President shall ensure that careful consideration is given to monitoring and enforcing the requirements of the Agreement and this title, with particular regard to the tendering procedures required by the Agreement or otherwise agreed to by a country or instrumentality likely to be designated pursuant to section 301(b).

(b) RULES OF ORIGIN.—

(1) ADVISORY RULINGS AND FINAL DETERMINATIONS.—For the purposes of this title, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 308(4)(B), an article is or would be a product of a foreign country or instrumentality designated pursuant to section 301(b).

(2) PENALTIES FOR FRAUDULENT CONDUCT.—In addition to any other provisions of law which may be applicable, section 1001 of title 18, United States Code, shall apply to fraudulent conduct with respect to the origin of products for purposes of qualifying for a waiver under section 301 or avoiding a prohibition under secton 302.

(c) REPORT TO CONGRESS ON RULES OF ORIGIN.—

(1) DOMESTIC ADMINISTRATIVE PRACTICES.—As soon as practicable after the close of the two-year period beginning on the date on which any waiver under section 301(a) first takes effect, the President shall prepare and transmit to Congress a report containing an evaluation of administrative practices under any provision of law which requires determinations to be made of the country of origin of goods, products, commodities, or other articles of commerce. Such evaluation shall be accompanied by the President's recommendations for legislative and executive measures required to improve and simplify and to make more uniform and consistent such practices. Such evaluation and recommendations shall take into account the special problems affecting insular possessions of the United States with respect to such practices.

(2) FOREIGN ADMINISTRATIVE PRACTICES.—The report required under paragraph (1) shall contain an evaluation of the administrative practices under the laws of each major industrial country which require determinations to be made of the country of origin of goods, products, commodities, or other articles

of commerce, including an assessment of such practices on the exports of the United States.

SEC. 306. LABOR SURPLUS AREA STUDIES.

(a) Effect on the Economy.—Prior to the renegotiations provided for in part IX, paragraph 6, of the Agreement, the President shall prepare and transmit to the Congress a report which assesses the economic impact, including the impact on employment in various regions of the United States, of the waiver of the provisions of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the Buy American Act, in the procurement of products produced in labor surplus areas and of the waiver of procurement set-asides for labor surplus areas.

(b) Effect on Targets.—On or before July 1, 1981, the President shall prepare and transmit to the Congress a report which assesses the effect of the waiver of the provisions of such title III in the procurement of products produced in labor surplus areas and the waiver of procurement set-asides for labor surplus areas on the fulfillment of the objectives of Executive Order 12073, issued August 16, 1978, relating to the encouragement of procurement in labor surplus areas, including an assessment of such waiver on the procurement targets set by the Administrator of the General Services Administration pursuant to such Executive order. On or before January 1, 1980, the President shall begin consultation with and provide interim reports to the congressional committees referred to in section 302(c)(1) concerning the report required by the preceding sentence.

SEC. 307. AVAILABILITY OF INFORMATION TO CONGRESSIONAL ADVISERS.

The United States Trade Representative shall make available to the Members of Congress designated as official advisers pursuant to section 161 of the Trade Act of 1974 information compiled by the Committee on Government Procurement under part VI, paragraph 9, of the Agreement.

SEC. 308. DEFINITIONS.

As used in this title—

(1) Agreement.—The term "Agreement" means the agreement on Government Procurement referred to in section 2(c) of this Act, as submitted to the Congress, but including rectifications, modifications, and amendments which are accepted by the United States.

(2) Civil aircraft.—The term "civil aircraft and related articles" means—

(A) all aircraft other than aircraft to be purchased for use by the Department of Defense or the United States Coast Guard;

(B) the engines (and parts and components for incorporation therein) of such aircraft;

(C) any other parts, components, and subassemblies for incorporation in such aircraft; and

(D) any ground flight simulators, and parts and components thereof, for use with respect to such aircraft,

whether to be purchased for use as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of such aircraft, and without regard to whether such aircraft or articles receive duty-free treatment pursuant to section 601(a)(2).

(3) DEVELOPED COUNTRIES.—The term "developed countries" means countries so designated by the President.

(4) ELIGIBLE PRODUCTS.—

(A) IN GENERAL.—The term "eligible product" means, with respect to any foreign country or instrumentality, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States.

(B) RULE OF ORIGIN.—An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(C) LOWERED THRESHOLD FOR CERTAIN PRODUCTS AS A CONSEQUENCE OF UNITED STATES-ISRAEL FREE TRADE AREA PROVISIONS.—The term "eligible product" includes a product or service of Israel having a contract value of $50,000 or more which would be covered for procurement by the United States under the Agreement on Government Procurement as in effect on the date on which the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel enters into force, but for the SDR 150,000 threshold provided for in article I(1)(b) of the Agreement on Government Procurement.

(5) INSTRUMENTALITY.—The term "instrumentality" shall not be construed to include an agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community.

(6) LEAST DEVELOPED COUNTRY.—The term "least developed country" means any country on the United Nations General Assembly list of least developed countries.

(7) MAJOR INDUSTRIAL COUNTRY.—The term "major industrial country" means any such country as defined in section 126 of the Trade Act of 1974 and any instrumentality of such a country.

SEC. 309. EFFECTIVE DATES.

The provisions of this title shall be effective on the date of enactment of this Act, except that—

(1) the authority of the President to grant waivers under section 303 shall be effective on January 1, 1980; and

(2) the authority of the President to grant waivers under section 301 shall be effective on January 1, 1981.

Chapter 11: LAWS REGULATING EXPORT ACTIVITIES

A. EXPORT ADMINISTRATION ACT OF 1979

[50 U.S.C. App. 2401, P.L. 96-72, as amended by P.L. 96-533, P.L. 97-145, P.L. 98-108, P.L. 98-207, P.L. 98-222, P.L. 99-64, P.L. 99-399, and P.L. 99-633]

AN ACT To provide authority to regulate exports, to improve the efficiency of export regulation, and to minimize interference with the ability to engage in commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Export Administration Act of 1979".

FINDINGS

SEC. 2. The Congress makes the following findings:

(1) The ability of the United States citizens to engage in international commerce is a fundamental concern of United States policy.

(2) Exports contribute significantly to the economic well-being of the United States and the stability of the world economy by increasing employment and production in the United States, and by earning foreign exchange, thereby contributing favorably to the trade balance. The restriction of exports from the United States can have serious adverse effects on the balance of payments and on domestic employment, particularly when restrictions applied by the United States are more extensive than those imposed by other countries.

(3) It is important for the national interest of the United States that both the private sector and the Federal Government place a high priority on exports, consistent with the economic, security, and foreign policy objectives of the United States.

(4) The availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States.

(5) Exports of goods or technology without regard to whether they make a significant contribution to the military potential of individual countries or combinations of countries may adversely affect the national security of the United States.

(6) Uncertainty of export control policy can inhibit the efforts of United States business and work to the detriment of

the overall attempt to improve the trade balance of the United States.

(7) Unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with free international trade, and retard the growth and development of nations.

(8) It is important that the administration of export controls imposed for national security purposes give special emphasis to the need to control exports of technology (and goods which contribute significantly to the transfer of such technology) which could make a significant contribution to the military potential of any country or combination of countries which would be detrimental to the national security of the United States.

(9) Minimization of restrictions on exports of agricultural commodities and products is of critical importance to the maintenance of a sound agricultural sector, to a positive contribution to the balance of payments, to reducing the level of Federal expenditures for agricultural support programs, and to United States cooperation in efforts to eliminate malnutrition and world hunger.

(10) It is important that the administration of export controls imposed for foreign policy purposes give special emphasis to the need to control exports of goods and substances hazardous to the public health and the environment which are banned or severely restricted for use in the United States, and which, if exported, could affect the international reputation of the United States as a responsible trading partner.

(11) The acquisition of national security sensitive goods and technology by the Soviet Union and other countries the actions or policies of which run counter to the national security interests of the United States, has led to the significant enhancement of Soviet bloc military-industrial capabilities. This enhancement poses a threat to the security of the United States, its allies, and other friendly nations, and places additional demands on the defense budget of the United States.

(12) Availability to controlled countries of goods and technology from foreign sources is a fundamental concern of the United States and should be eliminated through negotiations and other appropriate means whenever possible.

(13) Excessive dependence of the United States, it allies, or countries sharing common strategic objectives with the United States, on energy and other critical resources from potential adversaries can be harmful to the mutual and individual security of all those countries.

DECLARATION OF POLICY

SEC. 3. The Congress makes the following declarations:

(1) It is the policy of the United States to minimize uncertainties in export control policy and to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.

(2) It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary—

(A) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States;

(B) to restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations; and

(C) to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

(3) It is the policy of the United States (A) to apply any necessary controls to the maximum extent possible in cooperation with all nations, and (B) to encourage observance of a uniform export control policy by all nations with which the United States has defense treaty commitments or common strategic objectives.

(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

(5) It is the policy of the United States—

(A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any United States person;

(B) to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person; and

(C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular goods or technology or other information to United States export controls should be subjected to review by and consultation with representatives of appropriate United States Government agencies and private industry.

(7) It is the policy of the United States to use export controls, including license fees, to secure the removal by foreign countries of restrictions on access to supplies where such restrictions have or may have a serious domestic inflationary impact, have caused or may cause a serious domestic shortage, or have

been imposed for purposes of influencing the foreign policy of the United States. In effecting this policy, the President shall make reasonable and prompt efforts to secure the removal or reduction of such restrictions, policies, or actions through international cooperation and agreement before imposing export controls. No action taken in fulfillment of the policy set forth in this paragraph shall apply to the export of medicine or medical supplies.

(8) It is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make reasonable and prompt efforts to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before imposing export controls.

(9) It is the policy of the United States to cooperate with other countries with which the United States has defense treaty commitments or common strategic objectives in restricting the export of goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the security of the United States and of those countries with which the United States has defense treaty commitments, or common strategic objectives, and to encourage other friendly countries to cooperate in restricting the sale of goods and technology that can harm the security of the United States.

(10) It is the policy of the United States that export trade by United States citizens be given a high priority and not be controlled except when such controls (A) are necessary to further fundamental national security, foreign policy, or short supply objectives, (B) will clearly further such objectives, and (C) are administered consistent with basic standards of due process.

(11) It is the policy of the United States to minimize restrictions on the export of agricultural commodities and products.

(12) It is the policy of the United States to sustain vigorous scientific enterprise. To do so involves sustaining the ability of scientists and other scholars freely to communicate research findings, in accordance with applicable provisions of law, by means of publication, teaching, conferences, and other forms of scholarly exchange.

(13) It is the policy of the United States to control the export of goods and substances banned or severely restricted for use in the United States in order to foster public health and safety and to prevent injury to the foreign policy of the United States as well as to the credibility of the United States as a responsible trading partner.

(14) It is the policy of the United States to cooperate with countries which are allies of the United States and countries which share common strategic objectives with the United States in minimizing dependence on imports of energy and other critical resources from potential adversaries and in developing alternative supplies of such resources in order to min-

imize strategic threats posed by excessive hard currency earnings derived from such resource exports by countries with policies adverse to the security interests of the United States.

(15) It is the policy of the United States, particularly in light of the Soviet massacre of innocent men, women, and children aboard Korean Air Lines flight 7, to continue to object to exceptions to the International Control List for the Union of Soviet Socialist Republics, subject to periodic review by the President.

GENERAL PROVISIONS

SEC. 4. (a) TYPES OF LICENSES.—Under such conditions as may be imposed by the Secretary which are consistent with the provisions of this Act, the Secretary may require any of the following types of export licenses:

(1) A validated license, authorizing a specific export, issued pursuant to an application by the exporter.

(2) Validated licenses authorizing multiple exports, issued pursuant to an application by the exporter, in lieu of an individual validated license for each such export, including, but not limited to, the following:

(A) A distribution license, authorizing exports of goods to approved distributors or users of the goods in countries other than controlled countries. The Secretary shall grant the distribution license primarily on the basis of the reliability of the applicant and foreign consignees with respect to the prevention of diversion of goods to controlled countries. The Secretary shall have the responsibility of determining, with the assistance of all appropriate agencies, the reliability of applicants and their immediate consignees. The Secretary's determination shall be based on appropriate investigations of each applicant and periodic reviews of licensees and their compliance with the terms of licenses issued under this Act. Factors such as the applicant's products or volume of business, or the consignees' geographic location, sales distribution area, or degree of foreign ownership, which may be relevant with respect to individual cases, shall not be determinative in creating categories or general criteria for the denial of applications or withdrawal of a distribution license.

(B) A comprehensive operations license, authorizing exports and reexports of technology and related goods, including items from the list of militarily critical technologies developed pursuant to section 5(d) of this Act which are included on the control list in accordance with that section, from a domestic concern to and among its foreign subsidiaries, affiliates, joint venturers, and licensees that have long-term, contractually defined relations with the exporter, are located in countries other than controlled countries, and are approved by the Secretary. The Secretary shall grant the license to manufacturing, laboratory, or related operations on the basis of approval of the exporter's systems of control, including internal proprietary controls, applicable to the technology and related goods to be exported rather than approval of individual export transactions. The Secretary and the Commissioner of Customs, consistent with their authorities under section 12(a) of this Act, and with the assistance of all appropriate agencies, shall periodically, but not less frequently than annually, perform audits of licensing procedures under this subparagraph in order to assure the integrity and effectiveness of those procedures.

(C) A project license, authorizing exports of goods or technology for a specified activity.

(D) A service supply license, authorizing exports of spare or replacement parts for goods previously exported.

(3) A general license, authorizing exports, without application by the exporter.

(4) Such other licenses as may assist in the effective and efficient implementation of this Act.

(b) Control List.—The Secretary shall establish and maintain a list (hereinafter in this Act referred to as the "control list") stating license requirements (other than for general licenses) for exports of goods and technology under this Act.

(c) Foreign Availability.—In accordance with the provisions of this Act, the President shall not impose export controls for foreign policy or national security purposes on the export from the United States of goods or technology which he determines are available without restriction from sources outside the United States in sufficient quantities and comparable in quality to those produced in the United States, so as to render the controls ineffective in achieving their purposes unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the foreign policy or national security of the United States. In complying with the provisions of this subsection, the President shall give strong emphasis to bilateral or multilateral negotiations to eliminate foreign availability. The Secretary and the Secretary of Defense shall cooperate in gathering information relating to foreign availability, including the establishment and maintenance of a jointly operated computer system.

(d) Right of Export.—No authority or permission to export may be required under this Act, or under regulations issued under this Act, except to carry out the policies set forth in section 3 of this Act.

(e) Delegation of Authority.—The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may consider appropriate, except that no authority under this Act may be delegated to, or exercised by, any official of any department or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate. The President may not delegate or transfer his power, authority, and discretion to overrule or modify any recommendation or decision made by the Secretary, the Secretary of Defense, or the Secretary of State pursuant to the provisions of this Act.

(f) Notification of the Public; Consultation With Business.—The Secretary shall keep the public fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging trade. The Secretary shall meet regularly with representatives of a broad spectrum of enterprises, labor organizations, and citizens interested in or affected by export controls, in order to obtain their views on United States export control policy and the foreign availability of goods and technology.

NATIONAL SECURITY CONTROLS

Sec. 5. (a) Authority.—(1) In order to carry out the policy set forth in section 3(2)(A) of this Act, the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority contained in this subsection includes the authority to prohibit or curtail the transfer of goods or technology within the United States to embassies and affiliates of controlled countries. The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses described in section 4(a) of this Act.

(2) Whenever the Secretary makes any revision with respect to any goods or technology, or with respect to the countries or destinations, affected by export controls imposed under this section, the Secretary shall publish in the Federal Register a notice of such revision and shall specify in such notice that the revision relates to controls imposed under the authority contained in this section.

(3) In issuing regulations to carry out this section, particular attention shall be given to the difficulty of devising effective safeguards to prevent a country that poses a threat to the security of the United States from diverting critical technologies to military use, the difficulty of devising effective safeguards to protect critical goods, and the need to take the effective measures to prevent the reexport of critical technologies from other countries to countries that pose a threat to the security of the United States.

(b) Policy Toward Individual Countries.—(1) In administering export controls for national security purposes under this section, the President shall establish as a list of controlled countries those countries set forth in section 620(f) of the Foreign Assistance Act of 1961, except that the President may add any country to or remove any country from such list of controlled countries if he determines that the export of goods or technology to such country would or would not (as the case may be) make a significant contribution to the military potential of such country or a combination of countries which would prove detrimental to the national security of the United States. In determining whether a country is added to or removed from the list of controlled countries, the President shall take into account—

(A) the extent to which the country's policies are adverse to the national security interests of the United States,

(B) the country's Communist or non-Communist status;

(C) the present and potential relationship of the country with the United States;

(D) the present and potential relationship of the country with countries friendly or hostile to the United States;

(E) the country's nuclear weapons capability and the country's compliance record with respect to multilateral nuclear weapons agreements to which the United States is a party; and

(F) such other factors as the President considers appropriate.

Nothing in the preceding sentence shall be interpreted to limit the authority of the President provided in this Act to prohibit or curtail the export of any goods or technology to any country to which exports are controlled for national security purposes other than countries on the list of controlled countries specified in this paragraph. The President shall review not less frequently than every three years in the case of controls maintained cooperatively with other nations, and annually in the case of all other controls, United States policy toward individual countries to determine whether such policy is appropriate in light of the factors set forth in this paragraph.

(2) No authority or permission to export may be required under this section before goods or technology are exported in the case of exports to a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee, if the goods or technology is at such a level of performance characteristics that the export of the goods or technology to controlled countries requires only notification of the participating governments of the Coordinating Committee.

(c) CONTROL LIST.—(1) The Secretary shall establish and maintain, as part of the control list, a list of all goods and technology subject to export controls under this section. Such goods and technology shall be clearly identified as being subject to controls under this section.

(2) The Secretary of Defense and other appropriate departments and agencies shall identify goods and technology for inclusion on the list referred to in paragraph (1). Those items which the Secretary and the Secretary of Defense concur shall be subject to export controls under this section shall comprise such list. If the Secretary and the Secretary of Defense are unable to concur on such items, the matter shall be referred to the President for resolution.

(3) The Secretary shall review the list established pursuant to this subsection at least once each year in order to carry out the policy set forth in section 3(2)(A) of this Act and the provisions of this section, and shall promptly make such revisions of the list as may be necessary after each such review. Before beginning each annual review, the Secretary shall publish notice of that annual review in the Federal Register. The Secretary shall provide an opportunity during such review for comment and the submission of data, with or without oral presentation, by interested Government agencies and other affected or potentially affected parties. The Secretary shall publish in the Federal Register any revisions in the list, with an explanation of the reasons for the revisions. The Secretary shall further assess, as part of such review, the availability

from sources outside the United States of goods and technology comparable to those subject to export controls imposed under this section.

(d) MILITARILY CRITICAL TECHNOLOGIES.—(1) The Secretary, in consultation with the Secretary of Defense, shall review and revise the list established pursuant to subsection (c), as prescribed in paragraph (3) of such subsection, for the purpose of insuring that export controls imposed under this section cover and (to the maximum extent consistent with the purposes of this Act) are limited to militarily critical goods and technologies and the mechanisms through which such goods and technologies may be effectively transferred.

(2) The Secretary of Defense shall bear primary responsibility for developing a list of militarily critical technologies. In developing such list primary emphasis shall be given to—

(A) arrays of design and manufacturing know-how,

(B) keystone manufacturing, inspection, and test equipment,

(C) goods accompanied by sophisticated operation, application, or maintenance know-how, and

(D) keystone equipment which would reveal or give insight into the design and manufacture of a United States military system,

which are not possessed by, or available in fact from sources outside the United States to, controlled countries and which, if exported, would permit a significant advance in a military system of any such country.

(3) The list referred to in paragraph (2) shall be sufficiently specific to guide the determinations of any official exercising export licensing responsibilities under this Act.

(4) The Secretary and the Secretary of Defense shall integrate items on the list of militarily critical technologies into the control list in accordance with the requirements of subsection (c) of this section. The integration of items on the list of militarily critical technologies into the control list shall proceed with all deliberate speed. Any disagreement between the Secretary and the Secretary of Defense regarding the integration of an item on the list of militarily critical technologies into the control list shall be resolved by the President. Except in the case of a good or technology for which a validated license may be required under subsection (f)(4) or (h)(6) of this section, a good or technology shall be included on the control list only if the Secretary finds that controlled countries do not possess that good or technology, or a functionally equivalent good or technology, and the good or technology or functionally equivalent good or technology, is not available in fact to a controlled country from sources outside the United States in sufficient quantity and of comparable quality so that the requirement of a validated license for the export of such good or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section. The Secretary of Defense shall jointly submit a report to the Congress, not later than 1 year after the date of the enactment of the Export Administration Amendments Act of 1985, on actions taken to carry out this paragraph. For the purposes of this paragraph, assessment of whether a good or technology is functionally

equivalent shall include consideration of the factors described in subsection (f)(3) of this section.

(5) The Secretary of Defense shall establish a procedure for reviewing the goods and technology on the list of militarily critical technologies at least annually for the purpose of removing from the list of militarily critical technologies any goods or technology that are no longer militarily critical. The Secretary of Defense may add to the list of militarily critical technologies and good or technology that the Secretary of Defense determines is militarily critical, consistent with the provisions of paragraph (2) of this subsection. If the Secretary and the Secretary of Defense disagree as to whether any change in the list of militarily critical technologies by the addition or removal of a good or technology should also be made in the control list, consistent with the provisions of the fourth sentence of paragraph (4) of this subsection, the President shall resolve the disagreement.

(6) The establishment of adequate export controls for militarily critical technology and keystone equipment shall be accompanied by suitable reductions in the controls on the products of that technology and equipment.

(7) The Secretary of Defense shall, not later than 1 year after the date of the enactment of the Export Administration Amendments Act of 1985, report to the Congress on efforts by the Department of Defense to assess the impact that the transfer of goods or technology on the list of militarily critical technologies to controlled countries has had or will have on the military capabilities of those countries.

(e) EXPORT LICENSES.—(1) The Congress finds that the effectiveness and efficiency of the process of making export licensing determinations under this section is severely hampered by the large volume of validated export license applications required to be submitted under this Act. Accordingly, it is the intent of Congress in this subsection to encourage the use of the multiple validated export licenses described in section 4(a)(2) of this Act in lieu of individual validated licenses.

(2) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a validated license under this section for the export of goods or technology only if—

(A) the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, under the terms of such multilateral agreement, such export requires the specific approval of the parties to such multilateral agreement;

(B) with respect to such goods or technology, other nations do not possess capabilities comparable to those possessed by the United States; or

(C) the United States is seeking the agreement of other suppliers to apply comparable controls to such goods or technology and, in the judgment of the Secretary, United States export controls on such goods or technology, by means of such license, are necessary pending the conclusion of such agreement.

(3) The Secretary, subject to the provisions of subsection (1) of this section, shall not require an individual validated export license

for replacement parts which are exported to replace on a one-for-one basis parts that were in a good that has been lawfully exported from the United States.

(4) The Secretary shall periodically review the procedures with respect to the multiple validated export licenses, taking appropriate action to increase their utilization by reducing qualification requirements or lowering minimum thresholds, to combine procedures which overlap, and to eliminate those procedures which appear to be of marginal utility.

(5) The export of goods subject to export controls under this section shall be eligible, at the discretion of the Secretary, for a distribution license and other licenses authorizing multiple exports of goods, in accordance with section 4(a)(2) of this Act. The exports of technology and related goods subject to export controls under this section shall be eligible for a comprehensive operations license in accordance with section 4(a)(2)(B) of this Act.

(f) FOREIGN AVAILABILITY.—(1) The Secretary, in consultation with the Secretary of Defense and other appropriate Government agencies and with appropriate technical advisory committees established pursuant to subsection (h) of this section, shall review, on a continuing basis, the availability, to countries to which exports are controlled under this section, from sources outside the United States, including countries which participate with the United States in multilateral export controls, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary determines, in accordance with procedures and criteria which the Secretary shall by regulation establish, that any such goods or technology are available in fact to controlled countries from such sources in sufficient quantity and of comparable quality so that the requirement of a validated license for the export of such goods or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, the Secretary may not, after the determination is made, require a validated license for the export of such goods or technology during the period of such foreign availability, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination together with a concise statement of its basis, and the estimated economic impact of the decision.

(2) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a particular country and which meets all other requirements for such an application, if the Secretary determines that such goods or technology will, if the license is denied, be available in fact to such country from sources outside the United States including countries which participate with the United States in multilateral export controls, in sufficient quantity and of comparable quality so that denial of the license would be ineffective in achieving the purpose set forth in subsection (a) of this section, subject to the exception set forth in paragraph (1) of this subsection. In any case in which the Secertary makes a determination of foreign

availability under this paragraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under paragraph (1) with respect to such goods or technology is warranted.

(3) The Secretary shall make a foreign availability determination under paragraph (1) or (2) on the Secretary's own initiative or upon receipt of an allegation from an export license applicant that such availability exists. In making any such determination, the Secretary shall accept the representations of applicants made in writing and supported by reasonable evidence, unless such representations are contradicted by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information. In making determinations of foreign availability, the Secretary may consider such factors as cost, reliability, the availability and reliability of spare parts and the cost and quality thereof, maintenance programs, durability, quality of end products produced by the item proposed for export, and scale of production. For purposes of this paragraph, "evidence" may include such items as foreign manufacturers' catalogues, brochures, or operation or maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts.

(4) In any case in which export controls are maintained under this section notwithstanding foreign availability, on account of a determination by the President that the absence of the controls would prove detrimental to the national security of the United States, the President shall actively pursue negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. If, within 6 months after the President's determination, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export control involved would prove detrimental to the national security of the United States. Whenever the President has reason to believe goods or technology subject to export control for national security purposes by the United States may become available from other countries to controlled countries and that such availability can be prevented or eliminated by means of negotiations with such other countries, the President shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability.

(5) The Secretary shall establish in the Department of Commerce an Office of Foreign Availability which, in the fiscal year 1985, shall be under the direction of the Assistant Secretary of Commerce for Trade Administration, and, in the fiscal year 1986 and thereafter, shall be under the direction of the Under Secretary of Commerce for Export Administration. The Office shall be responsible for gathering and analyzing all the necessary information in order for the Secretary to make determinations of foreign availability under this Act. The Secretary shall make available to the Com-

mittee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at the end of each 6-month period during a fiscal year information on the operations of the Office, and on improvements in the Government's ability to assess foreign availability, during the 6-month period, including information on the training of personnel, the use of computers, and the use of Foreign Commercial Service officers. Such information shall also include a description of representative determinations made under this Act during the 6-month period that foreign availability did or did not exist (as the case may be), together with an explanation of such determinations.

(6) Each department or agency of the United States with responsibilities with respect to export controls, including intelligence agencies, shall, consistent with the protection of intelligence sources and methods, furnish information to the Office of Foreign Availability concerning foreign availability of goods and technology subject to export controls under this Act, and such Office, upon request or where appropriate, shall furnish to such departments and agencies the information it gathers and receives concerning foreign availability.

(7) The Secretary shall issue regulations whith respect to determinations of foreign availability under this Act not later than 6 months after the date of the enactment of the Export Administration Amendments Act of 1985.

(g) INDEXING.—In order to ensure that requirements for validated licenses and other licenses authorizing multiple exports are periodically removed as goods or technology subject to such requirements becomes obsolete with respect to the national security of the United States, regulations issued by the Secretary may, where appropriate, provide for annual increases in the performance levels of goods or technology subject to any such licensing requirement. The regulations issued by the Secretary shall establish as one criterion for the removal of goods or technology from such license requirements the anticipated needs of the military of controlled countries. Any such goods or technology which no longer meets the performance levels established by the regulations shall be removed from the list established pursuant to subsection (c) of this section unless, under such exceptions and under such procedures as the Secretary shall prescribe, any other department or agency of the United States objects to such removal and the Secretary determines, on the basis of such objection, that the goods or technology shall not be removed from the list. The Secretary shall also consider, where appropriate, removing site visitation requirements for goods and technology which are removed from the list unless objections described in this subsection are raised.

(h) TECHNICAL ADVISORY COMMITTEES.—(1) Upon written request by representatives of a substantial segment of any industry which produces any goods or technology subject to export controls under this section or being considered for such controls because of their significance to the national security of the United States, the Secretary shall appoint a technical advisory committee for any such goods or technology which the Secretary determines are difficult to evaluate because of questions concerning technical matters, worldwide availability, and actual utilization of production and technology, or licensing procedures. Each such committee shall consist of representatives of United States industry and Government, including the Departments of Commerce, Defense, and State, the intelligence community, and, in the discretion of the Secretary, other Government departments and agencies. No person serving on any such committee who is a representative of industry shall serve on such committee for more than four consecutive years.

(2) Technical advisory committees established under paragraph (1) shall advise and assist the Secretary, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under this Act, with respect to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving (A) technical matters, (B) worldwide availability and acutal utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to any goods or technology, (D) exports subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls, and (E) any other questions relating to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Nothing in this subsection shall prevent the Secretary or the Secretary of Defense from consulting, at any time, with any person representing industry or the general public, regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present evidence to such committees.

(3) Upon request of any member of any such committee, the Secretary may, if the Secretary determines it appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by such member in connection with the duties of such member.

(4) Each such committee shall elect a chairman, and shall meet at least every three months at the call of the chairman, unless the chairman determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purposes of this subsection. Each such committee shall be terminated after a period of 2 years, unless extended by the Secretary for additional periods of 2 years. The Secretary shall consult each such committee with respect to such termination or extension of that committee.

(5) To facilitate the work of the technical advisory committees, the Secretary, in conjunction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the goods or technology with respect to which that committee furnishes advice.

(6) Whenever a technical advisory committee certifies to the Secretary that goods or technology with respect to which such committee was appointed have become available in fact, to controlled countries, from sources outside the United States, including countries which participate with the United States in multilateral ex-

ports controls, in sufficient quantity and of comparable quality so that requiring a validated license for the export of such goods or technology would be ineffective in achieving the purpose set forth in subsection (a) of this section, the technical advisory committee shall submit that certification to the Congress at the same time the certification is made to the Secretary, together with the documentation for the certification. The Secretary shall investigate the foreign availability so certified and, not later than 90 days after the certification is made, shall submit a report to the technical advisory committee and the Congress stating that—

(A) the Secretary has removed the requirement of a validated license for the export of the goods or technology, on account of the foreign availability,

(B) the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability, or

(C) the Secretary has determined on the basis of the investigation that the foreign availability does not exist.

To the extent necessary, the report may be submitted on a classified basis. In any case in which the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability the President shall actively pursue such negotiations with the governments of the appropriate foreign countries. If, within 6 months after the Secretary submits such report to the Congress, the foreign availability has not been eliminated, the Secretary may not after the end of that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export control involved would prove detrimental to the national security of the United States.

(i) MULTILATERAL EXPORT CONTROLS.—The President shall enter into negotiations with the governments participating in the group known as the Coordinating Committee (hereinafter in this subsection referred to as the "Committee") with a view toward accomplishing the following objectives:

(1) Agreement to publish the list of items controlled for export by agreement of the Committee, together with all notes, understandings, and other aspects of such agreement of the Committee, and all changes thereto.

(2) Agreement to hold periodic meetings with high-level representatives of such governments, for the purpose of discussing export control policy issues and issuing policy guidance to the Committee.

(3) Agreement on more effective procedures for enforcing the export controls agreed to by the members of the Committee.

(4) Agreement to enhance full compliance by all parties with the export controls imposed by agreement of the Committee through the establishment of appropriate mechanisms.

(5) Agreement to improve the International Control List and minimize the approval of exceptions to that list, strengthen enforcement and cooperation in enforcement efforts, provide sufficient funding for the Committee, and improve the structure

and function of the Secretariat of the Committee by upgrading professional staff, translation services, data base maintenance, communications, and facilities.

(6) Agreement to coordinate the systems of export control documents used by the participating governments in order to verify effectively the movement of goods or technology subject to controls by the Committee from the country of any such government to any other place.

(7) Agreement to establish uniform, adequate criminal and civil penalties to deter more effectively diversions of items controlled for export by agreement of the Committee.

(8) Agreement to increase on-site inspections by national enforcement authorities of the participating governments to ensure that end users who have imported items controlled for export by agreement of the Committee are using such items for the stated end uses, and that such items are, in fact, under the control of those end users.

(9) Agreement to strengthen the Committee so that it functions effectively in controlling export trade in a manner that better protects the national security of each participant to the mutual benefit of all participants.

(j) COMMERCIAL AGREEMENTS WITH CERTAIN COUNTRIES.—(1) Any United States firm, enterprise, or other nongovernmental entity which enters into an agreement with any agency of the government of a controlled country, that calls for the encouragement of technical cooperation and that is intended to result in the export from the United States to the other party of unpublished technical data of United States origin, shall report to the Secretary the agreement with such agency in sufficient detail.

(2) The provisions of paragraph (1) shall not apply to colleges, universities, or other educational institutions.

(k) NEGOTIATIONS WITH OTHER COUNTRIES.—The Secretary of State in consultation with the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with other countries, including those countries not participating in the group known as the Coordinating Committee, regarding their cooperation in restricting the export of goods and technology in order to carry out the policy set forth in section 3(9) of this Act, as authorized by subsection (a) of this section, including negotiations with respect to which goods and technology should be subject to multilaterally agreed export restrictions and what conditions should apply for exceptions from those restrictions. In cases where such negotiations produce agreements on export restrictions comparable in practice to those maintained by the Coordinating Committee, the Secretary shall treat exports, whether by individual or multiple licenses, to countries party to such agreements in the same manner as exports to members of the Coordinating Committee are treated, including the same manner as exports are treated under subsection (b)(2) of this section and section 10(o) of this Act.

(l) DIVERSION OF CONTROLLED GOODS OR TECHNOLOGY.—(1) Whenever there is reliable evidence, as determined by the Secretary, that goods or technology which were exported subject to national security controls under this section to a controlled country have been diverted to an unauthorized use or consignee in violation of the conditions of an export license, the Secretary for as long as that diversion continues—

(A) shall deny all further exports, to or by the party or parties responsible for that diversion or who conspired in that diversion, of any goods or technology subject to national security controls under this section, regardless of whether such goods or technology are available from sources outside the United States; and

(B) may take such additional actions under this Act with respect to the party or parties referred to in subparagraph (A) as the Secretary determines are appropriate in the circumstances to deter the further unauthorized use of the previously exported goods or technology.

(2) As used in this subsection, the term "unauthorized use" means the use of United States goods or technology in the design, production, or maintenance of any item on the United States Munitions List, or the military use of any item on the International Control List of the Coordinating Committee.

(m) GOODS CONTAINING MICROPROCESSORS.—Export controls may not be imposed under this section on a good solely on the basis that the good contains an embedded microprocessor, if such microprocessor cannot be used or altered to perform functions other than those it performs in the good in which it is embedded. An export control may be imposed under this section on a good containing an embedded microprocessor referred to in the preceding sentence only on the basis that the functions of the good itself are such that the good, if exported, would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States.

(n) SECURITY MEASURES.—The Secretary and the Commissioner of Customs, consistent with their authorities under section 12(a) of this Act, and in consultation with the Director of the Federal Bureau of Investigation, shall provide advice and technical assistance to persons engaged in the manufacture or handling of goods or technology subject to export controls under this section to develop security systems to prevent violations or evasions of those export controls.

(o) RECORDKEEPING.—The Secretary, the Secretary of Defense, and any other department or agency consulted in connection with a license application under this Act or a revision of a list of goods or technology subject to export controls under this Act, shall make and keep records of their respective advice, recommendations, or decisions in connection with any such license application or revision, including the factual and analytical basis of the advice, recommendations, or decisions.

(p) NATIONAL SECURITY CONTROL OFFICE.—To assist in carrying out the policy and other authorities and responsibilities of the Secretary of Defense under this section, there is established in the Department of Defense a National Security Control Office under the direction of the Under Secretary of Defense Policy. The Secretary of Defense may delegate to that office such of those authorities and responsibilities, together with such ancillary functions, as the Secretary of Defense considers appropriate.

(q) EXCLUSION FOR AGRICULTURAL COMMODITIES.—This section does not authorize export controls on agricultural commodities, including fats, oils, and animal hides and skins.

FOREIGN POLICY CONTROLS

SEC. 6. (a) AUTHORITY—(1) In order to carry out the policy set forth in paragraph (2)(B), (7), (8), or (13) of section 3 of this Act, the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. The authority granted by this subsection shall be exercised by the Secretary, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Agriculture, the Secretary of the Treasury, the United States Trade Representative, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary.

(2) Any export control imposed under this section shall apply to any transaction or activity undertaken with the intent to evade that export control, even if that export control would not otherwise apply to that transaction or activity.

(3) Export controls maintained for foreign policy purposes shall expire on December 31, 1979, or one year after imposition, whichever is later, unless extended by the President in accordance with subsections (b) and (f). Any such extension and any subsequent extension shall not be for a period of more than a year.

(4) Whenever the Secretary denies any export license under this subsection, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this subsection, and the reasons for such denial, with reference to the criteria set forth in subsection (b) of this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls implemented under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restrictions, if appropriate.

(5) In accordance with the provisions of section 10 of this Act, the Secretary of State shall have the right to review any export license application under this section which the Secretary of State requests to review.

(b) CRITERIA.—(1) Subject to paragraph (2) of this subsection, the President may impose, extend, or expand export controls under this section only if the President determines that—

(A) such controls are likely to achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls, and that foreign policy purpose cannot be achieved through negotiations or other alternative means;

(B) the proposed controls are compatible with the foreign policy objectives of the United States and with overall United States policy toward the country to which exports are to be subject to the proposed controls;

(C) the reaction of other countries to the imposition, extension, or expansion of such export controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or to be counterproductive to United States foreign policy interests;

(D) the effect of the proposed controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or on the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives; and

(E) the United States has the ability to enforce the proposed controls effectively.

(2) With respect to those export controls in effect under this section on the date of the enactment of the Export Administration Amendments Act of 1985, the President, in determining whether to extend those controls, as required by subsection (a)(3) of this section, shall consider the criteria set forth in paragraph (1) of this subsection and shall consider the foreign policy consequences of modifying the export controls.

(c) CONSULTATION WITH INDUSTRY.—The Secretary in every possible instance shall consult with and seek advice from affected United States industries and appropriate advisory committees established under section 135 of the Trade Act of 1974 before imposing any export control under this section. Such consultation and advice shall be with respect to the criteria set forth in subsection (b)(1) and such other matters as the Secretary considers appropriate.

(d) CONSULTATION WITH OTHER COUNTRIES.—When imposing export controls under this section, the President shall, at the earliest appropriate opportunity, consult with the countries with which the United States maintains export controls cooperatively, and with such other countries as the President considers appropriate with respect to the criteria set forth in subsection (b)(1) and such other matters as the President considers appropriate.

(e) ALTERNATIVE MEANS.—Before resorting to the imposition of export controls under this section, the President shall determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other alternative means.

(f) CONSULTATION WITH THE CONGRESS.—(1) The President may impose or expand export controls under this section, or extend such controls as required by subsection (a)(3) of this section, only after consultation with the Congress, including the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) The President may not impose, expand, or extend export controls under this section until the President has submitted to the Congress a report—

(A) specifying the purpose of the controls;

(B) specifying the determinations of the President (or, in the case of those export controls described in subsection (b)(2), the considerations of the President) with respect to each of the criteria set forth in subsection (b)(1), the bases of such determinations (or considerations), and any possible adverse foreign policy consequences of the controls;

(C) describing the nature, the subjects, and the results of, or the plans for, the consultation with industry pursuant to subsection (c) and with other countries pursuant to subsection (d);

(D) specifying the nature and results of any alternative means attempted under subsection (e), or the reasons for imposing, expanding, or extending the controls without attempting any such alternative means; and

(E) describing the availability from other countries of goods or technology comparable to the goods or technology subject to the proposed export controls, and describing the nature and results of the efforts made pursuant to subsection (h) to secure the cooperation of foreign governments in controlling the foreign availability of such comparable goods or technology.

Such report shall also indicate how such controls will further significantly the foreign policy of the United States or will further its declared international obligations.

(3) To the extent necessary to further the effectiveness of the export controls portions of a report required by paragraph (2) may be submitted to the Congress on a classified basis, and shall be subject to the provisions of section 12(c) of this Act. Each such report shall, at the same time it is submitted to the Congress, also be submitted to the General Accounting Office for the purpose of assessing the report's full compliance with the intent of this subsection.

(4) In the case of export controls under this section which prohibit or curtail the export of any agricultural commodity, a report submitted pursuant to paragraph (2) shall be deemed to be the report required by section 7(g)(3)(A) of this Act.

(5) In addition to any written report required, under this section, the Secretary, not less frequently than annually, shall present in oral testimony before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives a report on policies and actions taken by the Government to carry out the provisions of this section.

(g) EXCLUSION FOR MEDICINE AND MEDICAL SUPPLIES AND FOR CERTAIN FOOD EXPORTS.—This section does not authorize export controls on medicine or medical supplies. This section also does not authorize export controls on donations of goods (including, but not limited to, food, educational materials, seeds and hand tools, medicines and medical supplies, water resources equipment, clothing and shelter materials, and basic household supplies) that are intended to meet basic human needs. Before export controls on food are imposed, expanded, or extended under this section, the Secretary shall notify the Secretary of State in the case of export controls applicable with respect to any developed country and shall notify the Director of the United States International Development Cooperation Agency in the case of export controls applicable with respect to any developing country. The Secretary of State with respect to developed countries, and the Director with respect to developing countries, shall determine whether the proposed export control on food would cause measurable malnutrition and shall inform the Secretary of that determination. If the Secretary is informed that the proposed export controls on food would cause measurable malnutrition, then those controls may not be imposed, expanded, or extended, as the case may be, unless the President determines that those controls are necessary to protect the national security interest of the United States, or unless the President determines that arrangements are insufficient to ensure that the food will reach those most in need. Each such determination by the Secretary of State or the Director of the United States International Development Cooperation Agency, and any such determination by the President, shall be reported to the Congress, together with a statement of the reasons for that determination. It is the intent of Congress that the President not impose export controls under this section on any goods or technology if he determines that the principal effect of the export of such goods or technology would be to help meet basic human needs. The subsection shall not be construed to prohibit the President from imposing restrictions on the export of medicine or medical supplies or of food under the International Emergency Economic Powers Act. This subsection shall not apply to any export control on medicine, medical supplies, or food, except for donations, which is in effect on the date of the enactment of the Export Administration Amendments Act of 1985. Notwithstanding the preceding provisions of this subsection, the President may impose export controls under this section on medicine, medical supplies, food, and donations of goods in order to carry out the policy set forth in paragraph (13) of section 3 of this Act.

(h) FOREIGN AVAILABILITY.—(1) In applying export controls under this section, the President shall take all feasible steps to initiate and conclude negotiations with appropriate foreign governments for the purpose of securing the cooperation of such foreign governments in controlling the export to countries and consignees to which the United States export controls apply of any goods or technology comparable to goods or technology controlled under this section.

(2) Before extending any export control pursuant to subsection (a)(3) of this section, the President shall evaluate the results of his actions under paragraph (1) of this subsection and shall include the results of that evaluation in his report to the Congress pursuant to subsection (f) of this section.

(3) If, within 6 months after the date on which export controls under this section are imposed or expanded, or within 6 months after the date of the enactment of the Export Administration Amendments Act of 1985 in the case of export controls in effect on such date of enactment, the President's efforts under paragraph (1) are not successful in securing the cooperation of foreign governments described in paragraph (1) with respect to those export controls, the Secretary shall thereafter take into account the foreign

availability of the goods or technology subject to the export controls. If the Secretary affirmatively determines that a good or technology subject to the export controls is available in sufficient quantity and comparable quality from sources outside the United States to countries subject to the export controls so that denial of an export license would be ineffective in achieving purposes of the controls, then the Secretary shall, during the period of such foreign availability, approve any license application which is required for the export of the good or technology and which meets all requirements for such a license. The Secretary shall remove the good or technology from the list established pursuant to subsection (1) of this section if the Secretary determines that such action is appropriate.

(4) In making a determination of foreign availability under paragraph (3) of this subsection, the Secretary shall follow the procedures set forth in section 5(f)(3) of this Act.

(i) INTERNATIONAL OBLIGATIONS.—The provisions of subsections (b), (c), (d), (e), (g), and (h) shall not apply in any case in which the President exercises the authority contained in this section to impose export controls, or to approve or deny export license applications, in order to fulfill obligations of the United States pursuant to treaties to which the United States is a party or pursuant to other international agreements.

(j) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—(1) The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before any license is approved for the export of goods or technology valued at more than $1,000,000 to any country concerning which the Secretary of State has made the following determinations:

(A) Such country has repeatedly provided support for acts of international terrorism.

(B) Such exports would make a significant contribution to the military potential of such country, including its military logistics capability, or would enhance the ability of such country to support acts of international terrorism.

(2) Any determination which has been made with respect to a country under paragraph (1) of this subsection may not be rescinded unless the President, at least 30 days before the proposed rescission would take effect, submits to the Congress a report justifying the rescission and certifying that—

(A) the country concerned has not provided support for international terrorism, including support or sanctuary for any major terrorist or terrorist group in its territory, during the preceding 6-month period; and

(B) the country concerned has provided assurances that it will not support acts of international terrorism in the future.

(k) CRIME CONTROL INSTRUMENTS.—(1) Crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to a validated export license. Notwithstanding any other provision of this Act—

(A) any determination of the Secretary of what goods or technology shall be included on the list established pursuant to subsection (1) of this section as a result of the export restrictions imposed by this subsection shall be made with the concurrence of the Secretary of State, and

(B) any determination of the Secretary to approve or deny an export license application to export crime control or detection instruments or equipment shall be made in concurrence with the recommendations of the Secretary of State submitted to the Secretary with respect to the application pursuant to section 10(e) of this Act,

except that, if the Secretary does not agree with the Secretary of State with respect to any determination under subparagraph (A) or (B), the matter shall be referred to the President for resolution.

(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the North Atlantic Treaty Organization or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the purposes of this subsection and section 502B of the Foreign Assistance Act of 1961.

(l) CONTROL LIST.—The Secretary shall establish and maintain, as part of the control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. The Secretary shall clearly identify on the control list which goods or technology, and which countries or destinations, are subject to which types of controls under this section. Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Secretary. If the Secretary and the Secretary of State are unable to agree on the list, the matter shall be referred to the President. Such list shall be reviewed not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, for the purpose of making such revisions as are necessary in order to carry out this section. During the course of such review, an assessment shall be made periodically of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled for export from the United States under this section.

(m) EFFECT ON EXISTING CONTRACTS AND LICENSES.—The President may not, under this section, prohibit or curtail the export or reexport of goods, technology, or other information—

(1) in performance of a contract or agreement entered into before the date on which the President reports to the Congress, pursuant to subsection (f) of this section, his intention to impose controls on the exports or reexport of such goods, technology, or other information, or

(2) under a validated license or other authorization issued under this Act,

unless and until the President determines and certifies to the Congress that—

(A) a breach of the peace poses a serious and direct threat to the strategic interest of the United States,

(B) the prohibition or curtailment of such contracts, agreements, licenses, or authorizations will be instrumental in remedying the situation posing the direct threat, and

(C) the export controls will continue only so long as the direct threat persists.

(n) Extension of Certain Controls.—Those export controls imposed under this section with respect to South Africa which were in effect on February 28, 1982, and ceased to be effective on March 1, 1982, September 15, 1982, or January 20, 1983, shall become effective on the date of the enactment of this subsection, and shall remain in effect until 1 year after such date of enactment. At the end of that 1-year period, any of those controls made effective by this subsection may be extended by the President in accordance with subsections (b) and (f) of this section.

(o) Expanded Authority to Impose Controls.—(1) In any case in which the President determines that it is necessary to impose controls under this section without any limitation contained in subsection (c), (d), (e), (g), (h), or (m) of this section, the President may impose those controls only if the President submits that determination to the Congress, together with a report pursuant to subsection (f) of this section with respect to the proposed controls, and only if a law is enacted authorizing the imposition of those controls. If a joint resolution authorizing the imposition of those controls is introduced in either House of Congress within 30 days after the Congress receives the determination and report of the President, that joint resolution shall be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate and to the appropriate committee of the House of Representatives. If either such committee has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution.

(2) For purposes of this subsection, the term "joint resolution" means a joint resolution the matter after the resolving clause of which is as follows: "That the Congress, having received on a determination of the President under section 6(o)(1) of the Export Administration Act of 1979 with respect to the export controls which are set forth in the report submitted to the Congress with that determination, authorizes the President to impose those export controls.", with the date of the receipt of the determination and report inserted in the blank.

(3) In the computation of the periods of 30 days referred to in paragraph (1), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

SHORT SUPPLY CONTROLS

Sec. 7. (a) Authority.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the President may prohibit or curtail the export of any goods subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. In curtailing exports to carry out the policy set forth in section 3(2)(C) of this Act, the President shall allocate a portion of export licenses on the basis of factors other than a prior history of exportation. Such factors shall include the extent to which a country engages in equitable trade practices with respect to United States goods and treats the United States equitably in times of short supply.

(2) Upon imposing quantitative restrictions on exports of any goods to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall include in a notice published in the Federal Register with respect to such restrictions an invitation to all interested parties to submit written comments within 15 days from the date of publication on the impact of such restrictions and the method of licensing used to implement them.

(3) In imposing export controls under this section, the President's authority shall include, but not be limited to, the imposition of export license fees.

(b) MONITORING.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall monitor exports, and contracts for exports, of any good (other than a commodity which is subject to the reporting requirements of section 812 of the Agricultural Act of 1970) when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Any such monitoring shall commence at a time adequate to assure that the monitoring will result in a data base sufficient to enable policies to be developed, in accordance with section 3(2)(C) of this Act, to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of such controls in a timely manner. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection.

(2) The results of such monitoring shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with respect to each item monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. Such reports may be made monthly if the Secretary determines that there is insufficient information to justify weekly reports.

(3) The Secretary shall consult with the Secretary of Energy to determine whether monitoring or export controls under this section are warranted with respect to exports of facilities, machinery, or equipment normally and principally used, or intended to be used, in the production, conversion, or transportation of fuels and energy (except nuclear energy), including, but not limited to, drilling rigs, platforms, and equipment; petroleum refineries, natural gas processing, liquefaction, and gasification plants; facilities for production of synthetic natural gas or synthetic crude oil; oil and gas pipelines, pumping stations, and associated equipment; and vessels for transporting oil, gas, coal, and other fuels.

(c) PETITIONS FOR MONITORING OR CONTROLS.—(1)(A) Any entity, including a trade association, firm, or certified or recognized union or group of workers, that is representative of an industry or a substantial segment of an industry that processes metallic materials capable of being recycled may transmit a written petition to the Secretary requesting the monitoring of exports or the imposition of export controls, or both, with respect to any such material, in order to carry out the policy set forth in section 3(2)(C) of this Act.

(B) Each petition shall be in such form as the Secretary shall prescribe and shall contain information in support of the action requested. The petition shall include any information reasonably available to the petitioner indicating that each of the criteria set forth in paragraph (3)(A) of this subsection is satisfied.

(2) Within 15 days after receipt of any petition described in paragraph (1), the Secretary shall publish a notice in the Federal Register. The notice shall—

(A) include the name of the material that is the subject of the petition,

(B) include the Schedule B number of the material as set forth in the Statistical Classification of Domestic and Foreign Commodities Exported from the United States,

(C) indicate whether the petitioner is requesting that controls or monitoring, or both, be imposed with respect to the exportation of such material, and

(D) provide that interested persons shall have a period of 30 days beginning on the date of publication of such notice to submit to the Secretary written data, views or arguments, with or without opportunity for oral presentation, with respect to the matter involved.

At the request of the petitioner or any other entity described in paragraph (1)(A) with respect to the material that is the subject of the petition, or at the request of any entity representative of producers or exporters of such material, the Secretary shall conduct public hearings with respect to the subject of the petition, in which case the 30-day period may be extended to 45 days.

(3)(A) Within 45 days after the end of the 30- or 45-day period described in paragraph (2), as the case may be, the Secretary shall determine whether to impose monitoring or controls, or both, on the export of the material that is the subject of the petition, in order to carry out the policy set forth in section 3(2)(C) of this Act. In making such determination, the Secretary shall determine whether—

(i) there has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply and demand;

(ii) there has been a significant increase in the domestic price of such material or a domestic shortage of such material relative to demand;

(iii) exports of such material are as important as any other cause of a domestic price increase or shortage relative to demand found under clause (ii);

(iv) a domestic price increase or shortage relative to demand found under clause (ii) has significantly adversely affected or may significantly adversely affect the national economy or any sector thereof, including a domestic industry; and

(v) monitoring or controls, or both, are necessary in order to carry out the policy set forth in section 3(2)(C) of this Act.

(B) The Secretary shall publish in the Federal Register a detailed statement of the reasons for the Secretary's determination pursuant to subparagraph (A) of whether to impose monitoring or controls, or both, including the findings of fact in support of that determination.

(4) Within 15 days after making a determination under paragraph (3) to impose monitoring or controls on the export of a material, the Secretary shall publish in the Federal Register proposed regulations with respect to such monitoring or controls. Within 30 days after the publication of such proposed regulations, and after considering any public comments on the proposed regulations, the Secretary shall publish and implement final regulations with respect to such monitoring or controls.

(5) For purposes of publishing notices in the Federal Register and scheduling public hearings pursuant to this subsection, the Secretary may consolidate petitions, and responses to such petitions which involve the same or related materials.

(6) If a petition with respect to a particular material or group of materials has been considered in accordance with all the procedures prescribed in this subsection, the Secretary may determine, in the absence of significantly changed circumstances, that any other petition with respect to the same material or group of materials which is filed within 6 months after the consideration of the prior petition has been completed does not merit complete consideration under this subsection.

(7) The procedures and time limits set forth in this subsection with respect to a petition filed under this subsection shall take precedence over any review undertaken at the initiative of the Secretary with respect to the same subject as that of the petition.

(8) The Secretary may impose monitoring or controls, on a temporary basis, on the export of a metallic material after a petition is filed under paragraph (1)(A) with respect to that material but before the Secretary makes a determination under paragraph (3) with respect to that material only if—

(A) the failure to take such temporary action would result in irreparable harm to the entity filing the petition, or to the national economy or segment thereof, including a domestic industry, and

(B) the Secretary considers such action to be necessary to carry out the policy set forth in section 3(2)(C) of this Act.

(9) The authority under this subsection shall not be construed to affect the authority of the Secretary under any other provision of this Act, except that if the Secretary determines, on the Secretary's own initiative, to impose monitoring or controls, or both, on the export of metallic materials capable of being recycled, under the authority of this section, the Secretary shall publish the reasons for such action in accordance with paragraph (3) (A) and (B) of this subsection.

(10) Nothing contained in this subsection shall be construed to preclude submission on a confidential basis to the Secretary of information relevant to a decision to impose or remove monitoring or controls under the authority of this Act, or to preclude consideration of such information by the Secretary in reaching decisions required under this subsection. The provisions of this paragraph shall not be construed to affect the applicability of section 552(b) of title 5, United States Code.

(d) Domestically Produced Crude Oil.—(1) Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from the country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this subsection, or (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States) may be exported from the United States, or any of its territories and possessions, subject to paragraph (2) of this subsection.

(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if—

(A) the President so recommends to the Congress after making and publishing express findings that exports of such crude oil, including exchanges—

(i) will not diminish the total quantity and quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

(ii) will, within 3 months following the initiation of such exports or exchanges, result in (I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (II) not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

(iii) will be made only pursuant to contracts which may be terminated if the crude oil suppliers of the United States are interrupted, threatened, or diminished;

(iv) are clearly necessary to protect the national interest; and

(v) are in accordance with the provisions of this Act; and

(B) the President includes such findings in his recommendation to the Congress and the Congress, within 60 days after receiving that recommendation, agrees to a joint resolution which approves such exports on the basis of those findings, and which is thereafter enacted into law.

(3) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920, the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

(4) Notwithstanding the provisions of section 20 of this Act, the provisions of this subsection shall expire on September 30, 1990.

(e) REFINED PETROLEUM PRODUCTS.—(1) In any case in which the President determines that it is necessary to impose export controls on refined petroleum products in order to carry out the policy set forth in section 3(2)(C) of this Act, the President shall notify the Congress of that determination. The President shall also notify the Congress if and when he determines that such export controls are no longer necessary. During any period in which a determination that such export controls are necessary is in effect, no refined petroleum product may be exported except pursuant to an export license specifically authorizing such export. Not later than 5 days after an application for a license to export any refined petroleum product or residual fuel oil is received, the Secretary shall notify the Congress of such application, together with the name of the exporter, the destination of the proposed export, and the amount and price of the proposed export. Such notification shall be made to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) The Secretary may not grant such license during the 30-day period beginning on the date on which notification to the Congress under paragraph (1) is received, unless the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that the proposed export is vital to the national interest and that a delay in issuing the license would adversely affect that interest.

(3) This subsection shall not apply to (A) any export license application for exports to a country with respect to which historical export quotas established by the Secretary on the basis of past trading relationships apply, or (B) any license application for exports to a country if exports under the license would not result in more than 250,000 barrels of refined petroleum products being exported from the United States to such country in any fiscal year.

(4) For purposes of this subsection, "refined petroleum product" means gasoline, kerosene, distillates, propane or butane gas, diesel fuel, and residual fuel oil refined within the United States or entered for consumption within the United States.

(5) The Secretary may extend any time period prescribed in section 10 of this Act to the extent necessary to take into account delays in action by the Secretary on a license application on account of the provisions of this subsection.

(f) CERTAIN PETROLEUM PRODUCTS.—Petroleum products refined in United States Foreign Trade Zones, or in the United States Territory of Guam, from foreign crude oil shall be excluded from any quantitative restrictions imposed under this section except that, if the Secretary finds that a product is in short supply, the Secretary may issue such regulations as may be necessary to limit exports.

(g) AGRICULTURAL COMMODITIES.—(1) The Authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy except to the extent the President determines that such exercise of authority is required to carry out the policies set forth in subparagraph (A) or (B) or paragraph (2) of section 3 of this Act. The Secretary of Agriculture shall, by exercising the authorities which the Secretary of Agriculture has under other applicable provisions of law, collect data with respect to export sales of animal hides and skins.

(2) Upon approval of the Secretary, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed to carry out the policy set forth in section 3(2)(C) of this Act subsequent to such approval. The Secretary may not grant such approval unless the Secretary receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds (A) that such commodities will eventually be exported, (B) that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, (C) that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and (D) that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Secretary may issue such regulations as may be necessary to implement this paragraph.

(3)(A) If the President imposes export controls on any agricultural commodity in order to carry out the policy set forth in paragraph (2)(B), (2)(C), (7), or (8) of section 3 of this Act, the President shall immediately transmit a report on such action to the Congress, setting forth the reasons for the controls in detail and specifying the period of time, which may not exceed 1 year, that the controls are proposed to be in effect. If the Congress, within 60 days after the date of its receipt of the report, adopts a joint resolution pursuant to paragraph (4) approving the imposition of the export controls, then such controls shall remain in effect for the period specified in the report, or until terminated by the President, whichever occurs first. If the Congress, within 60 days after the date of its receipt of such report fails to adopt a joint resolution approving such controls, then such controls shall cease to be effective upon the expiration of the 60-day period.

(B) The provisions of subparagraph (A) and paragraph (4) shall not apply to export controls—

(i) which are extended under this Act if the controls, when imposed, were approved by the Congress under subparagraph (A) and paragraph (4); or

(ii) which are imposed with respect to a country as part of the prohibition or curtailment of all exports to that country.

(4)(A) For purposes of this paragraph, the term joint resolution means only a joint resolution the matter after the resolving clause of which is as follows: "That, pursuant to section 7(g)(3) of the Export Administration Act of 1979, the President may impose export controls as specified in the report submitted to the Congress on   .", with the blank space being filled with the appropriate date.

(B) On the day on which a report is submitted to the House of Representatives and the Senate under paragraph (3), a joint resolution with respect to the export controls specified in such report shall be introduced (by request) in the House by the chairman of the Committee on Foreign Affairs, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a report is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which the House is in session.

(C) All joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee and all joint resolutions introduced in the Senate shall be referred to the Committee on Banking, Housing and Urban Affairs.

(D) If the committee of either House to which a joint resolution has been referred has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

(E) A joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this paragraph, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this paragraph which may be similar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

(F) In the case of a joint resolution described in subparagraph (A), if, before the passage by one House of a joint resolution of that House, that House receives a resolution with respect to the same matter from the other House, then—

(i) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(ii) the vote on final passage shall be on the joint resolution of the other House.

(5) In the computation of the period of 60 days referred to in paragraph (3) and the period of 30 days referred to in subparagraph (D) of paragraph (4), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

(h) BARTER AGREEMENTS.—(1) The exportation pursuant to a barter agreement of any goods which may lawfully be exported from the United States, for any goods which may lawfully be imported into the United States, may be exempted, in accordance with paragraph (2) of this subsection, from any quantitative limitation on exports (other than any reporting requirement) imposed to carry out the policy set forth in section 3(2)(C) of this Act.

(2) The Secretary shall grant an exemption under paragraph (1) if the Secretary finds, after consultation with the appropriate department or agency of the United States, that—

(A) for the period during which the barter agreement is to be performed—

(i) the average annual quantity of the goods to be exported pursuant to the barter agreement will not be required to satisfy the average amount of such goods estimated to be required annually by the domestic economy and will be surplus thereto; and

(ii) the average annual quantity of the goods to be imported will be less than the average amount of such goods estimated to be required annually to supplement domestic production; and

(B) the parties to such barter agreement have demonstrated adequately that they intend, and have the capacity, to perform such barter agreement.

(3) For purposes of this subsection, the term "barter agreement" means any agreement which is made for the exchange, without monetary consideration, of any goods produced in the United States for any goods produced outside of the United States.

(4) This subsection shall apply only with respect to barter agreements entered into after the effective date of this Act.

(i) UNPROCESSED RED CEDAR.—(1) The Secretary shall require a validated license, under the authority contained in subsection (a) of this section, for the export of unprocessed western red cedar (Thuja plicata) logs, harvested from State or Federal lands. The Secretary shall impose quantitative restrictions upon the export of unprocessed western red cedar logs during the 3-year period beginning on the effective date of this Act as follows:

(A) Not more than thirty million board feet scribner of such logs may be exported during the first year of such 3-year period.

(B) Not more than fifteen million board feet scribner of such logs may be exported during the second year of such period.

(C) Not more than five million board feet scribner of such logs may be exported during the third year of such period.

After the end of such 3-year period, no unprocessed western red cedar logs harvested from State or Federal lands may be exported from the United States.

(2) To the maximum extent practicable, the Secretary shall utilize the multiple validated export licenses described in section 4(a)(2) of this Act in lieu of validated licenses for exports under this subsection.

(3) The Secretary shall allocate export licenses to exporters pursuant to this subsection on the basis of a prior history of exportation by such exporters and such other factors as the Secretary considers necessary and appropriate to minimize any hardship to the producers of western red cedar and to further the foreign policy of the United States.

(4) Unprocessed western red cedar logs shall not be considered to be an agricultural commodity for purposes of subsection (g) of this section.

(5) As used in this subsection, the term "unprocessed western red cedar" means red cedar timber which has not been processed into—

(A) lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better;

(B) chips, pulp, and pulp products;

(C) veneer and plywood;

(D) poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; or

(E) shakes and shingles.

(j) EFFECT OF CONTROLS ON EXISTING CONTRACTS.—The export restrictions contained in subsection (i) of this section and any export controls imposed under this section shall not affect any contract to harvest unprocessed western red cedar from State lands which was entered into before October 1, 1979, and the performance of which would make the red cedar available for export. Any export controls imposed under this section on any agricultural commodity (including fats, oils, and animal hides and skins) or on any forest product or fishery product, shall not affect any contract to export entered into before the date on which such controls are imposed. For purposes of this subsection, the term "contract to export" includes, but is not limited to, an export sales agreement and an agreement to invest in an enterprise which involves the export of goods or technology.

FOREIGN BOYCOTTS

SEC. 8. (a) PROHIBITIONS AND EXCEPTIONS.—(1) For the purpose of implementing the policies set forth in subparagraph (A) or (B) of paragraph (5) of section 3 of this Act, the President shall issue regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:

(A) Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country with any business concern organized under the laws of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.

(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

(C) Furnishing information with respect to the race, religion, sex, or national origin of any United States person or of any owner, officer, director, or employee of such person.

(D) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country. Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.

(E) Furnishing information about whether any person is a member of, has made contribution to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited by regulations issued pursuant to this paragraph, and no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

(2) Regulations issued pursuant to paragraph (1) shall provide exceptions for—

(A) Complying or agreeing to comply with requirements (i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country, or (ii) prohibiting the shipment of goods to the boycotted country on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(C) complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(D) complying or agreeing to comply with export requirements of the boycotting country relating to shipments or transshipments of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

(E) compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and

(F) compliance by a United States person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his own use, including the performance of contractual services within that country, as may be defined by such regulations.

(3) Regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

(4) Nothing in this subsection may be construed to supersede or limit the operation of the antitrust, or civil rights laws of the United States.

(5) This section shall apply to any transaction or activity undertaken, by or through a United States person or any other person, with intent to evade the provisions of this section as implemented by the regulations issued pursuant to this subsection, and such regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses otherwise prohibited, which are not within the intent of such exceptions.

(b) Foreign Policy Controls.—(1) In addition to the regulations issued pursuant to subsection (a) of this section, regulations issued under section 6 of this Act shall implement the policies set forth in section 3(5).

(2) Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 3(5) shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made

available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any goods or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 3(5) of this Act.

(c) PREEMPTION.—The provisions of this section and the regulations issued pursuant thereto shall preempt any law, rule, or regulation of any of the several States or the District of Columbia, or any of the territories or possessions of the United States, or of any governmental subdivision thereof, which law, rule, or regulation pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

PROCEDURES FOR HARDSHIP RELIEF FROM EXPORT CONTROLS

SEC. 9. (a) FILING OF PETITIONS.—Any person who, in such person's domestic manufacturing process or other domestic business operation, utilizes a product produced abroad in whole or in part from a good historically obtained from the United States but which has been made subject to export controls, or any person who historically has exported such a good, may transmit a petition of hardship to the Secretary requesting an exemption from such controls in order to alleviate any unique hardship resulting from the imposition of such controls. A petition under this section shall be in such form as the Secretary shall prescribe and shall contain information demonstrating the need for the relief requested.

(b) DECISION OF THE SECRETARY.—Not later than 30 days after receipt of any petition under subsection (a), the Secretary shall transmit a written decision to the petitioner granting or denying the requested relief. Such decision shall contain a statement setting forth the Secretary's basis for the grant or denial. Any exemption granted may be subject to such conditions as the Secretary considers appropriate.

(c) FACTORS TO BE CONSIDERED.—For purposes of this section, the Secretary's decision with respect to the grant or denial of relief from unique hardship resulting directly or indirectly from the imposition of export controls shall reflect the Secretary's consideration of factors such as the following:

(1) Whether denial would cause a unique hardship to the petitioner which can be alleviated only by granting an exception to the applicable regulations. In determining whether relief shall be granted, the Secretary shall take into account—

(A) ownership of material for which there is no practicable domestic market by virtue of the location or nature of the material;

(B) potential serious financial loss to the applicant if not granted an exception;

(C) inability to obtain, except through import, an item essential for domestic use which is produced abroad from the good under control;

(D) the extent to which denial would conflict, to the particular detriment of the applicant, with other national policies including those reflected in any international agreement to which the United States is a party;

(E) possible adverse effects on the economy (including unemployment) in any locality or region of the United States; and

(F) other relevant factors, including the applicant's lack of an exporting history during any base period that may be established with respect to export quotas for the particular good.

(2) The effect a finding in favor of the applicant would have on attainment of the basic objectives of the short supply control program.

In all cases, the desire to sell at higher prices and thereby obtain greater profits shall not be considered as evidence of a unique hardship, nor will circumstances where the hardship is due to imprudent acts or failure to act on the part of the petitioner.

PROCEDURES FOR PROCESSING EXPORT LICENSE APPLICATIONS; OTHER INQUIRIES

SEC. 10. (a) PRIMARY RESPONSIBILITY OF THE SECRETARY.—(1) All export license applications required under this Act shall be submitted by the applicant to the Secretary. All determinations with respect to any such applicant shall be made by the Secretary, subject to the procedures provided in this section.

(2) It is the intent of the Congress that a determination with respect to any export license application be made to the maximum extent possible by the Secretary without referral of such application to any other department or agency of the Government.

(3) To the extent necessary, the Secretary shall seek information and recommendations from the Government departments and agencies concerned with aspects of United States domestic and foreign policies and operations having an important bearing on exports. Such departments and agencies shall cooperate fully in rendering such information and recommendations.

(b) INITIAL SCREENING.—Within 10 days after the date on which any export license application is submitted pursuant to subsection (a)(1), the Secretary shall—

(1) send the applicant an acknowledgment of the receipt of the application and the date of the receipt;

(2) submit to this applicant a written description of the procedures required by this section, the responsibilities of the Secretary and of other departments and agencies with respect to the application and the rights of the applicant;

(3) return the application without action if the application is improperly completed or if additional information is required, with sufficient information to permit the application to be properly resubmitted, in which case if such application is re-

submitted, it shall be treated as a new application for the purpose of calculating the time periods prescribed in this section;

(4) determine whether it is necessary to refer the application to any other department or agency and, if such referral is determined to be necessary, inform the applicant of any such department or agency to which the application will be referred; and

(5) determine whether it is necessary to submit the application to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a part and, if so, inform the applicant of this requirement.

(c) ACTION ON CERTAIN APPLICATIONS.—Except as provided in subsection (o), in each case in which the Secretary determines that it is not necessary to refer an application to any other department or agency for its information and recommendations, a license shall be formally issued or denied within 60 days after a properly completed application has been submitted pursuant to this section.

(d) REFERRAL TO OTHER DEPARTMENTS AND AGENCIES.—Except in the case of exports described in subsection (o), in each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, within 20 days after the submission of a properly completed application—

(1) refer the application, together with all necessary analysis and recommendations of the Department of Commerce, concurrently to all such departments or agencies; and

(2) if the applicant so requests, provide the applicant with an opportunity to review for accuracy any documentation to be referred to any such department or agency with respect to such application for the purpose of describing the export in question in order to determine whether such documentation accurately describes the proposed export.

Notwithstanding the 10-day period set forth in subsection (b), in the case of exports described in subsection (o), in each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, immediately upon receipt of the properly completed application, refer the application to such department or agency for its review. Such review shall be concurrent with that of the Department of Commerce.

(e) ACTION BY OTHER DEPARTMENTS AND AGENCIES.—(1) Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary the information or recommendations requested with respect to the application. The information or recommendations shall be submitted within 20 days after the department or agency receives the application or, in the case of exports described in subsection (o), before the expiration of the time periods permitted by that subsection. Except as provided in paragraph (2), any such department or agency which does not submit its recommendations within the time period prescribed in the preceding sentence shall be deemed by the Secretary to have no objection to the approval of such application.

(2) (A) Except in the case of exports described in subsection (o), if the head of any such department or agency notifies the Secretary

before the expiration of the time period provided in paragraph (1) for submission of its recommendations that more time is required for review by such department or agency, such department or agency shall have an additional 20-day period to submit its recommendations to the Secretary. If such department or agency does not submit its recommendations within the time period prescribed by the preceding sentence, it shall be deemed by the Secretary to have no objection to the approval of such application.

(B) In the case of exports described in subsection (o), if the head of any such department or agency notifies the Secretary, before the expiration of the 15-day period provided in subsection (o)(1), that more time is required for review by such department or agency, the Secretary shall notify the applicant, pursuant to subsection (o)(1)(C), that additional time is required to consider the application, and such department or agency shall have additional time to consider the application within the limits permitted by subsection (o)(2). If such department or agency does not submit its recommendations within the time periods permitted under subsection (o), it shall be deemed by the Secretary to have no objection to the approval of such application.

(f) Action by the Secretary.—(1) Within 60 days after receipt of the recommendations of other departments and agencies with respect to a license application, as provided in subsection (e), the Secretary shall formally issue or deny the license. In deciding whether to issue or deny a license, the Secretary shall take into account any recommendation of a department or agency with respect to the application in question. In cases where the Secretary receives conflicting recommendations, the Secretary shall, within the 60-day period provided for in this subsection, take such action as may be necessary to resolve such conflicting recommendations. The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

(2) In cases where the Secretary receives questions or negative considerations or recommendations from any other department or agency with respect to an application, the Secretary shall, to the maximum extent consistent with the national security and foreign policy of the United States, inform the applicant in writing of the specific questions raised and any such negative considerations or recommendations. Before a final determination with respect to the application in made, the applicant shall be entitled—

(A) to respond in writing to such questions, considerations, or recommendations within 30 days after receipt of such information from the Secretary; and

(B) upon the filing of a written request with the Secretary within 15 days after the receipt of such information, to respond in person to the department or agency raising such questions, considerations, or recommendations.

The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

(3) In cases where the Secretary has determined that an application should be denied, the applicant shall be informed in writing, within 5 days after such determination is made, of—

(A) the determination,

(B) the statutory basis for the proposed denial,

(C) the policies set forth in section 3 of this Act which would be furthered by the proposed denial,

(D) what if any modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with export controls imposed under this Act,

(E) which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for considerations with regard to such modifications or restrictions, if appropriate,

(F) to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the determination to deny the application, and

(G) the availability of appeal procedures.

The Secretary shall allow the applicant at least 30 days to respond to the Secretary's determination before the license application is denied. In the event decisions on license applications are deferred inconsistent with the provisions of this section, the applicant shall be so informed in writing within 5 days after the deferral.

(4) If the Secretary determines that a particular application or set of applications is of exceptional importance and complexity, and that additional time is required for negotiations to modify the application or applications, the Secretary may extend any time period prescribed in this section. The Secretary shall notify the Congress and the applicant of such extension and the reasons therefor. The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

(g) SPECIAL PROCEDURES FOR SECRETARY OF DEFENSE.—(1) Notwithstanding any other provision of this section, the Secretary of Defense is authorized to review any proposed export of any goods or technology to any country, to which exports are controlled for national security purposes and, whenever the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of any such country, to recommend to the President that such export be disapproved.

(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the Secretary, and confirm in writing the types and categories of transactions which should be reviewed by the Secretary of Defense in order to make a determination referred to in paragraph (1). Whenever a license or other authority is requested for the export to any country to which exports are controlled for national security purposes of goods or technology within any such type or category, the Secretary shall notify the Secretary of Defense of such request, and the Secretary may not issue any license or other authority pursuant to such request before the expiration of the period within which the President may disapprove such export. The Secretary of Defense shall carefully consider any notification submitted by the Secretary pursuant to this paragraph and, not later than 20 days after notification of the request, shall—

(A) recommend to the President that he disapprove any request for the export of the goods or technology involved to the particular country if the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country or any other country;

(B) notify the Secretary that he would recommend approval subject to specified conditions; or

(C) recommend to the Secretary that the export of goods or technology be approved.

If the President notifies the Secretary, within 20 days after receiving a recommendation from the Secretary of Defense, that he disapproves such export, no license or other authority may be issued for the export of such goods or technology to such country.

(3) The Secretary shall approve or disapprove a license application, and issue or deny a license, in accordance with the provisions of this subsection, and, to the extent applicable, in accordance with the time periods and procedures otherwise set forth in this section.

(4) Whenever the President exercises his authority under this subsection to modify or overrule a recommendation made by the Secretary of Defense or exercises his authority to modify or overrule any recommendation made by the Secretary of Defense under subsection (c) or (d) of section 5 of this Act with respect to the list of goods and technologies controlled for national security purposes, the President shall promptly transmit to the Congress a statement indicating his decision, together with the recommendation of the Secretary of Defense.

(h) MULTILATERAL CONTROLS.—In any case in which an application, which has been finally approved under subsection (c), (f), or (g) of this section, is required to be submitted to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party, the license shall not be issued as prescribed in such subsections, but the Secretary shall notify the applicant of the approval of the application (and the date of such approval) by the Secretary subject to such multilateral review. The license shall be issued upon approval of the application under such multilateral review. If such multilateral review has not resulted in a determination with respect to the application within 40 days after such date, the Secretary's approval of the license shall be final and the license shall be issued, unless the Secretary determines that issuance of the license would prove detrimental to the national security of the United States. At the time at which the Secretary makes such a determination, the Secretary shall notify the applicant of the determination and shall notify the Congress of the determination, the reasons for the determination, the reasons for which the multilateral review could not be concluded within such 40-day period, and the actions planned or being taken by the United States Government to secure conclusion of the multilateral review. At the end of every 40-day period after such notification to Congress, the Secretary shall advise the applicant and the Congress of the status of the application, and shall report to the Congress in detail on the reasons for the further delay and any further actions being taken by the United States Government to secure conclusion of the multilateral review. In addition, at the time at which the Secretary issues or denies the license upon conclusion of the multilateral review, the Secretary shall notify the Congress of such issuance or denial and of the total time required for the multilateral review.

(i) RECORDS.—The Secretary and any department or agency to which any application is referred under this section shall keep accurate records with respect to all applications considered by the Secretary or by any such department or agency, including, in the case of the Secretary, any dissenting recommendations received from any such department or agency.

(j) APPEAL AND COURT ACTION.—(1) The Secretary shall establish appropriate procedures for any applicant to appeal to the Secretary the denial of an export license application of the applicant.

(2) In any case in which any action prescribed in this section is not taken on a license application within the time periods established by this section (except in the case of a time period extended under subsection (f)(4) of which the applicant is notified), the applicant may file a petition with the Secretary requesting compliance with the requirements of this section. When such petition is filed, the Secretary shall take immediate steps to correct the situation giving rise to the petition and shall immediately notify the applicant of such steps.

(3) If, within 20 days after a petition is filed under paragraph (2), the processing of the application has not been brought into conformity with the requirements of this section, or the application has been brought into conformity with such requirements but the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for a restraining order, a temporary or permanent injunction, or other appropriate relief, to require compliance with the requirements of this section. The United States district courts shall have jurisdiction to provide such relief, as appropriate.

(k) CHANGES IN REQUIREMENTS FOR APPLICATIONS.—Except as provided in subsection (b)(3) of this section, in any case in which, after a license application is submitted, the Secretary changes the requirements for such a license application, the Secretary may request appropriate additional information of the applicant, but the Secretary may not return the application to the applicant without action because it fails to meet the changed requirements.

(l) OTHER INQUIRIES.—(1) In any case in which the Secretary receives a written request asking for the proper classification of a good or technology on the control list, the Secretary shall, within 10 working days after receipt of the request, inform the person making the request of the proper classification.

(2) In any case in which the Secretary receives a written request for information about the applicability of export license requirements under this Act to a proposed export transaction or series of transactions, the Secretary shall, within 30 days after receipt of the request, reply with that information to the person making the request.

(m) SMALL BUSINESS ASSISTANCE.—Not later than 120 days after the date of the enactment of this subsection, the Secretary shall develop and transmit to the Congress a plan to assist small businesses in the export licensing application process under this Act. The plan shall include, among other things, arrangements for counseling small businesses on filing applications and identifying goods or technology on the control list, proposals for seminars and conferences to educate small businesses on export controls and licensing procedures, and the preparation of informational brochures.

(n) Reports on License Applications.—(1) Not later than 180 days after the date of the enactment of this subsection, and not later than the end of each 3-month period thereafter, the Secretary shall submit to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate a report listing—

(A) all applications on which action was completed during the preceding 3-month period and which required a period longer than the period permitted under subsection (c), (f)(1), or (h) of this section, as the case may be, before notification of a decision to approve or deny the application was sent to the applicant; and

(B) in a separate section, all applications which have been in process for a period longer than the period permitted under subsection (c), (f)(1), or (h) of this section, as the case may be, and upon which final action has not been taken.

(2) With regard to each application, each listing shall identify—

(A) the application case number;

(B) the value of the goods or technology to which the application relates;

(C) the country of destination of the goods or technology;

(D) the date on which the application was received by the Secretary;

(E) the date on which the Secretary approved or denied the application;

(F) the date on which the notification of approval or denial of the application was sent to the applicant; and

(G) the total number of days which elapsed between receipt of the application, in its properly completed form, and the earlier of the last day of the 3-month period to which the report relates, or the date on which notification of approval or denial of the application was sent to the applicant.

(3) With respect to an application which was referred to other departments or agencies, the listing shall also include—

(A) the departments or agencies to which the application was referred:

(B) the date or dates of such referral; and

(C) the date or dates on which recommendations were received from those departments or agencies.

(4) With respect to an application referred to any other department or agency which did not submit or has not submitted its recommendations on the application within the period permitted under subsection (e) of this section to submit such recommendations, the listing shall also include—

(A) the office responsible for processing the application and the position of the officer responsible for the office; and

(B) the period of time that elapsed before the recommendations were submitted or that has elapsed since referral of the application, as the case may be.

(5) Each report shall also provide an introduction which contains—

(A) summary of the number of applications described in paragraph (1)(A) and (B) of this subsection, and the value of the goods or technology involved in the applications, grouped according to—

(i) the number of days which elapsed before action on the applications was completed, or which has elapsed without action on the applications being completed, as follows: 61 to 75 days, 76 to 90 days, 91 to 105 days, 106 to 120 days, and more than 120 days; and

(ii) the number of days which elapsed before action on the applications was completed, or which has elapsed without action on the applications being completed, beyond the period permitted under subsection (c), (f)(1), or (h) of this section for the processing of applications, as follows: not more than 15 days, 16 to 30 days, 31 to 45 days, 46 to 60 days, and more than 60 days; and

(B) a summary by country of destination of the number of applications described in paragraph (1)(A) and (B) of this subsection, and the value of the goods or technology involved in applications, on which action was not completed within 60 days.

(o) EXPORTS TO MEMBERS OF COORDINATING COMMITTEE.—(1) Fifteen working days after the date of formal filing with the Secretary of an individual validated license application for the export of goods or technology to a country that maintains export controls on such goods or technology pursuant to the agreement of the governments participating in the group known as the Coordinating Committee, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license unless—

(A) the application has been otherwise approved by the Secretary, in which case it shall be valid and effective according to the terms of the approval;

(B) the application has been denied by the Secretary pursuant to this section and the applicant has been so informed, or the applicant has been informed, pursuant to subsection (f)(3) of this section, that the application should be denied; or

(C) the Secretary requires additional time to consider the application and the applicant has been so informed.

(2) In the event that the Secretary notifies an applicant pursuant to paragraph (1)(C) that more time is required to consider an individual validated license application, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license 30 working days after the date that such license application was formally filed with the Secretary unless—

(A) the application has been otherwise approved by the Secretary, in which case it shall be valid and effective according to the terms of the approval; or

(B) the application has been denied by the Secretary pursuant to this section and the applicant has been so informed, or the applicant has been informed, pursuant to subsection (f)(3) of this section, that the application should be denied.

(3) In reviewing an individual license application subject to this subsection, the Secretary shall evaluate the information set forth in the application and the reliability of the end-user.

(4) Nothing in this subsection shall affect the scope or availability of licenses authorizing multiple exports set forth in section 4(a)(2) of this Act.

(5) The provisions of this subsection shall take effect 4 months after the date of the enactment of the Export Administration Amendments Act of 1985.

VIOLATIONS

SEC. 11. (a) IN GENERAL.—Except as provided in subsection (b) of this section, whoever knowingly violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or $50,000, whichever is greater, or imprisoned not more than 5 years, or both.

(b) WILLFUL VIOLATIONS.—Whoever willfully violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of the goods or technology involved is, any controlled country or any country to which exports are controlled for foreign policy purposes—

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

(2) Any person who is issued a validated license under this Act for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense—

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 5 years, or both.

(3) Any person who possesses any goods or technology—

(A) with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of this Act or any regulation, order, or license issued with respect to such control, or

(B) knowing or having reason to believe that the goods or technology would be so exported,

shall, in the case of a violation of an export control imposed under section 5 (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (1) of this subsection and shall, in the case of a violation of an export control imposed under section 6 (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in subsection (a).

(4) Any person who takes any action with the intent to evade the provisions of this act or any regulation, order, or license issued under this Act shall be subject to the penalties set forth in subsection (a), except that in the case of an evasion of an export control imposed under section 5 or 6 of this Act (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (1) of this subsection.

(5) Nothing in this subsection or subsection (a) shall limit the power of the Secretary to define by regulations violations under this Act.

(c) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—(1) The Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed $10,000 for each violation of this Act or any regulation, order, or license issued under this act, either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national security controls imposed under section 5 of this Act or controls imposed on the export of defense articles and defense services under section 38 of the Arms Export Control Act may not exceed $100,000.

(2)(A) The authority under this Act to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of this Act.

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act for a violation of the regulations issued pursuant to section 8(a) of this Act may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 544 through 557 of title 5, United States Code.

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of this Act shall be made available for public inspection and copying.

(3) An exception may not be made to any order issued under this Act which revokes the authority of a United States person to export goods or technology unless the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate are first consulted concerning the exception.

(4) The President may by regulation provide standards for establishing levels of civil penalty provided in this subsection based upon the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.

(d) PAYMENT OF PENALTIES.—The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. In addition, the payment of any penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such a deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

(e) REFUNDS.—Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c), or any amounts realized from the forefeiture of any property interest or proceeds pursuant to subsection (g), shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty imposed pursuant to subsection (c), within 2 years after payment, on the ground of a material error of fact or law in the imposition of the penalty. Notwithstanding section 1346(a) of title 28, United States Code, no action for the refund of any such penalty may be maintained in any court.

(f) ACTIONS FOR RECOVERY OF PENALTIES.—In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c) a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

(g) FORFEITURE OF PROPERTY INTEREST AND PROCEEDS.—(1) Any person who is convicted under subsection (a) or (b) of a violation of an export control imposed under section 5 of this Act (or any regulation, order, or license issued with respect to such control) shall, in addition to any other penalty, forfeit to the United States—

(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the goods or tangible items that were the subject of the violation;

(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the export or attempt to export that was the subject of the violation; and

(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

(2) The procedures in any forfeiture under this subsection, and the duties and authority of the courts of the United States and the Attorney General with respect to any forfeiture action under this subsection or with respect to any property that may be subject to forfeiture under this subsection, shall be governed by the provisions of section 1963 of title 18, United States Code.

(h) PRIOR CONVICTIONS.—No person convicted of a violation of section 793, 794, or 798 of title 18, United States Code, section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778) shall be eligible, at the discretion of the Secretary, to apply for or use any export license under this Act for a period of up to 10 years from the date of the conviction. The Secretary may revoke any export license under this Act in which such person has an interest at the time of the conviction.

(i) OTHER AUTHORITIES.—Nothing in subsection (c), (d), (f), (g), or (h) limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this Act, or any regulation, order, or license issued under this Act;

(2) the authority to compromise and settle, administrative proceedings brought with respect to violations of this Act, or any regulation, order, or license issued under this Act; or

(3) the authority to compromise, remit or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

ENFORCEMENT

SEC. 12. (a) GENERAL AUTHORITY.—To the extent necessary or appropriate to the enforcement of this Act or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949 or the Export Administration Act of 1969, the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations within the United States, and the Commissioner of Customs (and officers or employees of the United States Customs Service specifically designated by the Commissioner) may make such investigations outside of the United States, and the head of such department or agency (and such officers or employees) may obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpena issued to, any such person, a district court of the United States, after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof. In addition to the authority conferred by this paragraph, the Secretary (and officers or employees of the Department of Commerce designated by the Secretary) may conduct, outside the United States, pre-license investigations and post-shipment verifications of items licensed for export, and investigations in the enforcement of section 8 of this Act.

(2)(A) Subject to subparagraph (B) of this paragraph, the United States Customs Service is authorized, in the enforcement of this Act, to search, detain (after search), and seize goods or technology at those ports of entry or exit from the United States where officers of the Customs Service are authorized by law to conduct such searches, detentions, and seizures, and at those places outside the United States where the Customs Service, pursuant to agreements or other arrangements with other countries, is authorized to perform enforcement activities.

(B) An officer of the United States Customs Service may do the following in carrying out enforcement authority under this Act:

(i) Stop, search, and examine a vehicle, vessel, aircraft, or person on which or whom such officer has reasonable cause to suspect there are any good or technology that has been, is being, or is about to be exported from the United States in violation of this Act.

(ii) Search any package or container in which such officer has reasonable cause to suspect there are any goods or technology that has been, is being, or is about to be exported from the United States in violation of this Act.

(iii) Detain (after search) or seize and secure for trial any goods or technology on or about such vehicle, vessel, aircraft, or person, or in such package or container, if such officer has probable cause to believe the goods or technology has been, is being, or is about to be exported from the United States in violation of this Act.

(iv) Make arrests without warrant for any violation of this Act committed in his or her presence or view or if the officer has probable cause to believe that the person to be arrested has committed or is committing such a violation.

The arrest authority conferred by clause (iv) of this subparagraph is in addition to any arrest authority under other laws.

(3)(A) Subject to subparagraph (B) of this paragraph, the Secretary shall have the responsibility for the enforcement of section 8 of this Act and, in the enforcement of the other provisions of this Act, the Secretary is authorized to search, detain (after search), and seize goods or technology at those places within the United States other than those ports specified in paragraph (2)(A) of this subsection. The search, detention (after search), or seizure of goods or technology at those ports and places specified in paragraph (2)(A) may be conducted by officers or employees of the Department of Commerce designated by the Secretary with the concurrence of the Commissioner of Customs or a person designated by the Commissioner.

(B) The Secretary may designate any employee of the Office of Export Enforcement of the Department of Commerce to do the following in carrying out enforcement authority under this Act:

(i) Execute any warrant or other process issued by a court or officer of competent jurisdiction with respect to the enforcement of the provisions of this Act.

(ii) Make arrests without warrant for any violation of this Act committed in his or her presence or view, or if the officer or employee has probable cause to believe that the person to be arrested has committed or is committing such a violation.

(iii) Carry firearms in carrying out any activity described in clause (i) or (ii).

(4) The authorities first conferred by the Export Administration Amendments Act of 1985 under paragraph (3) shall be exercised pursuant to guidelines approved by the Attorney General. Such guidelines shall be issued not later than 120 days after the date of the enactment of the Export Administration Amendments Act of 1985.

(5) All cases involving violations of this Act shall be referred to the Secretary for purposes of determining civil penalties and administrative sanctions under section 11(c) of this Act, or to the Attorney General for criminal action in accordance with this Act.

(6) Notwithstanding any other provision of law, the United States Customs Service may expend in the enforcement of export controls under this Act not more than $12,000,000 in the fiscal year 1985 and not more than $14,000,000 in the fiscal year 1986.

(7) Not later than 90 days after the date of the enactment of the Export Administration Amendments Act of 1985, the Secretary, with the concurrence of the Secretary of the Treasury, shall publish in the Federal Register procedures setting forth, in accordance with this subsection, the responsibilities of the Department of Commerce and the United States Customs Service in the enforcement of this Act. In addition, the Secretary, with the concurrence of the Secretary of the Treasury, may publish procedures for the sharing of information in accordance with subsection (c)(3) of this section, and procedures for the submission to the appropriate departments and agencies by private persons of information relating to the enforcement of this Act.

(8) For purposes of this section, a reference to the enforcement of this Act or to a violation of this Act includes a reference to the enforcement or a violation of any regulation, order, or license issued under this Act.

(b) IMMUNITY.—No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of section 6002 of title 18, United States Code, shall apply with respect to any individual who specifically claims such privilege.

(c) CONFIDENTIALITY.—(1) Except as otherwise provided by the third sentence of section 8(b)(2) and by section 11(c)(2)(C) of this Act, information obtained under this Act on or before June 30, 1980, which is deemed confidential, including Shippers' Export Declarations, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Secretary determines that the withholding thereof is contrary to the national interest. Information obtained under this Act after June 30, 1980, may be withheld only to the extent permitted by statute, except that information obtained for the purpose of consideration of, or concerning, license applications under this Act shall be withheld from public disclosure unless the release of such information is determined by the Secretary to be in the national interest. Enactment of this subsection shall not affect any judicial proceeding commenced under section 552 of title 5, United States Code, to obtain access to boycott reports submitted prior to

October 31, 1976, which was pending on May 15, 1979; but such proceeding shall be continued as if this Act had not been enacted.

(2) Nothing in this Act shall be construed as authorizing the withholding of information from the Congress or from the General Accounting Office. All information at any time under this Act or previous Acts regarding the control of exports, including any report or license application required under this Act, shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, or member thereof, shall disclose any information obtained under this Act or previous Acts regarding the control of exports which is submitted on a confidential basis unless the full committee determines that the withholding of that information is contrary to the national interest. Notwithstanding paragraph (1) of this subsection, information referred to in the second sentence of this paragraph shall, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods and activities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 313 of the Budget and Accounting Act, 1921, be made available only by that agency, upon request, to the Comptroller General of the United States or to any officer or employee of the General Accounting Office who is authorized by the Comptroller General to have access to such information. No officer or employee of the General Accounting Office shall disclose, except to the Congress in accordance with this paragraph, any such information which is submitted on a confidential basis and from which any individual can be identified.

(3) Any department or agency which obtains information which is relevant to the enforcement of this Act, including information pertaining to any investigation, shall furnish such information to each department or agency with enforcement responsibilities under this Act to the extent consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities. The provisions of this paragraph shall not apply to information subject to the restrictions set forth in section 9 of title 13, United States Code; and return information, as defined in subsection (b) of section 6103 of the Internal Revenue Code of 1954, may be disclosed only as authorized by such section. The Secretary and the Commissioner of Customs, upon request, shall exchange any licensing and enforcement information with each other which is necessary to facilitate enforcement efforts and effective license decisions. The Secretary, the Attorney General, and the Commissioner of Customs shall consult on a continuing basis with one another and with the heads of other departments and agencies which obtain information subject to this paragraph, in order to facilitate the exchange of such information.

(d) REPORTING REQUIREMENTS.—In the administration of this Act, reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

(e) SIMPLIFICATION OF REGULATIONS.—The Secretary, in consultation with appropriate United States Government departments and agencies and with appropriate technical advisory committees established under section 5(h), shall review the regulations issued under this Act and the commodity control list in order to determine how compliance with the provisions of this Act can be facilitated by simplifying such regulations, by simplifying or clarifying such list, or by any other means.

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 13. (a) EXEMPTION.—Except as provided in section 11(c)(2) and subsection (c) of this section, the functions exercised under this Act are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

(b) PUBLIC PARTICIPATION.—It is the intent of the Congress that, to the extent practicable, all regulations imposing controls on exports under this Act be issued in proposed form with meaningful opportunity for public comment before taking effect. In cases where a regulation imposing controls under this Act is issued with immediate effect, it is the intent of the Congress that meaningful opportunity for public comment also be provided and that the regulation be reissued in final form after public comments have been fully considered.

(c) PROCEDURES RELATING TO CIVIL PENALTIES AND SANCTIONS.—(1) In any case in which a civil penalty or other civil sanction (other than a temporary denial order or a penalty or sanction for a violation of section 8) is sought under section 11 of this Act, the charged party is entitled to receive a formal complaint specifying the charges and, at his or her request, to contest the charges in a hearing before an administrative law judge. Subject to the provisions of this subsection, any such hearing shall be conducted in accordance with sections 556 and 557 of title 5, United States Code. With the approval of the administrative law judge, the Government may present evidence in camera in the presence of the charged party or his or her representative. After the hearing, the administrative law judge shall make findings of fact and conclusions of law in a written decision, which shall be referred to the Secretary. The Secretary shall, in a written order, affirm, modify, or vacate the decision of the administrative law judge within 30 days after receiving the decision. The order of the Secretary shall be final and is not subject to judicial review.

(2) The proceedings described in paragraph (1) shall be concluded within a period of 1 year after the complaint is submitted, unless the administrative law judge extends such period for good cause shown.

(3) An administrative law judge referred to in this subsection shall be appointed by the Secretary from among those considered qualified for selection and appointment under section 3105 of title 5, United States Code. Any person who, for at least 2 of the 10 years immediately preceding the date of the enactment of the Export Administration Amendments Act of 1985, has served as a

hearing commissioner of the Department of Commerce shall be included among these considered as qualified for selection and appointment to such position.

(d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—(1) In any case in which it is necessary, in the public interest, to prevent an imminent violation of this Act or any regulation, order, or license issued under this Act, the Secretary may, without a hearing, issue an order temporarily denying United States export privileges (hereinafter in this subsection referred to as a "temporary denial order") to a person. A temporary denial order may be effective no longer than 60 days unless renewed in writing by the Secretary for additional 60-day periods in order to prevent such an imminent violation, except that a temporary denial order may be renewed only after notice and an opportunity for a hearing is provided.

(2) A temporary denial order shall define the imminent violation and state why the temporary denial order was granted without a hearing. The person or persons subject to the issuance or renewal of a temporary denial order may file an appeal of the issuance or renewal of the temporary denial order with an administrative law judge who shall, within 10 working days after the appeal is filed, recommend that the temporary denial order be affirmed, modified, or vacated. Parties may submit briefs and other material to the judge. The recommendation of the administrative law judge shall be submitted to the Secretary who shall either accept, reject, or modify the recommendation by written order within 5 working days after receiving the recommendation. The written order of the Secretary under the preceding sentence shall be final and is not subject to judicial review. The temporary denial order shall be affirmed only if it is reasonable to believe that the order is required in the public interest to prevent an imminent violation of this Act or any regulation, order, or license issued under this Act.

(e) APPEALS FROM LICENSE DENIALS.—A determination of the Secretary, under section 10(f) of this Act, to deny a license may be appealed by the applicant to an administrative law judge who shall have the authority to conduct proceedings to determine only whether the item sought to be exported is in fact on the control list. Such proceedings shall be conducted within 90 days after the appeal is filed. Any determination by an administrative law judge under this subsection and all materials filed before such judge in the proceedings shall be reviewed by the Secretary, who shall either affirm or vacate the determination in a written decision within 30 days after receiving the determination. The Secretary's written decision shall be final and is not subject to judicial review. Subject to the limitations provided in section 12(c) of this Act, the Secretary's decision shall be published in the Federal Register.

ANNUAL REPORT

SEC. 14. (a) CONTENTS.—Not later than December 31 of each year, the Secretary shall submit to the Congress a report on the administration of this Act during the preceding fiscal year. All agencies shall cooperate fully with the Secretary in providing information for such report. Such report shall include detailed information with respect to—

(1) the implementation of the policies set forth in section 3;

(2) general licensing activities under sections 5, 6, and 7, and any changes in the exercise of the authorities contained in sections 5(a), 6(a), and 7(a);

(3) the results of the review of United States policy toward individual countries pursuant to section 5(b);

(4) the results, in as much detail as may be included consistent with the national security and the need to maintain the confidentiality of proprietary information, of the actions, including reviews and revisions of export controls maintained for national security purposes, required by section 5(c)(3);

(5) actions taken to carry out section 5(d);

(6) changes in categories of items under export control referred to in section 5(e);

(7) determinations of foreign availability made under section 5(f), the criteria used to make such determinations, the removal of any export controls under such section, and any evidence demonstrating a need to impose export controls for national security purposes notwithstanding foreign availability;

(8) actions taken in compliance with section 5(f)(5);

(9) the operation of the indexing system under section 5(g);

(10) consultations with the technical advisory committees established pursuant to section 5(h), the use made of the advice rendered by such committees, and the contributions of such committees toward implementing the policies set forth in this Act;

(11) the effectiveness of export controls imposed under section 6 in furthering the foreign policy of the United States;

(12) export controls and monitoring under section 7;

(13) the information contained in the reports required by section 7(b)(2), together with an analysis of—

(A) the impact on the economy and world trade of shortages or increased prices for commodities subject to monitoring under this Act or section 812 of the Agricultural Act of 1970;

(B) the worldwide supply of such commodities; and

(C) actions being taken by other countries in response to such shortages or increased prices;

(14) actions taken by the President and the Secretary to carry out the antiboycott policies set forth in section 3(5) of this Act;

(15) organizational and procedural changes undertaken in furtherance of the policies set forth in this Act, including changes to increase the efficiency of the export licensing process and to fulfill the requirements of section 10, including an accounting of appeals received, court orders issued, and actions taken pursuant thereto under subsection (j) of such section;

(16) delegations of authority by the President as provided in section 4(e) of this Act;

(17) efforts to keep the business sector of the Nation informed with respect to policies and procedures adopted under this Act;

(18) any reviews undertaken in furtherance of the policies of this Act, including the results of the review required by section

12(d), and any action taken, on the basis of the review required by section 12(e), to simplify regulations issued under this Act;

(19) violations under section 11 and enforcement activities under section 12; and

(20) the issuance of regulations under the authority of this Act, including an explanation of each case in which regulations were not issued in accordance with the first sentence of section 13(b).

(b) REPORT ON CERTAIN EXPORT CONTROLS.—To the extent that the President determines that the policies set forth in section 3 of this Act require the control of the export of goods and technology other than those subject to multilateral controls, or require more stringent controls than the multilateral controls, the President shall include in each annual report the reasons for the need to impose, or to continue to impose, such controls and the estimated domestic economic impact on the various industries affected by such controls.

(c) REPORT ON NEGOTIATIONS.—The President shall include in each annual report a detailed report on the progress of the negotiations required by section 5(i), until such negotiations are concluded.

(d) REPORT OF EXPORTS TO CONTROLLED COUNTRIES.—The Secretary shall include in each annual report a detailed report which lists every license for exports to controlled countries which was approved under this Act during the preceding fiscal year. Such report shall specify to whom the license was granted, the type of goods or technology exported, and the country receiving the goods or technology. The information required by this subsection shall be subject to the provisions of section 12(c) of this Act.

(e) REPORT ON DOMESTIC ECONOMIC IMPACT OF EXPORTS TO CONTROLLED COUNTRIES.—The Secretary shall include in each annual report a detailed description of the extent of injury to United States industry and the extent of job displacement caused by United States exports of goods and technology to controlled countries. The annual report shall also include a full analysis of the consequences of exports of turnkey plants and manufacturing facilities to controlled countries which are used by such countries to produce goods for export to the United States or to compete with United States products in export markets.

ADMINISTRATIVE AND REGULATORY AUTHORITY

SEC. 15. (a) UNDER SECRETARY OF COMMERCE.—The President shall appoint, by and with the advice and consent of the Senate, an Under Secretary of Commerce for Export Administration who shall carry out all functions of the Secretary under this Act which were delegated to the office of the Assistant Secretary of Commerce for Trade Administration before the date of the enactment of the Export Administration Amendments Act of 1985; and such other functions under this Act which were delegated to such office before such date of enactment, as the Secretary may delegate. The President shall appoint, by and with the advice and consent of the Senate two Assistant Secretaries of Commerce to assist the Under Secretary in carrying out such functions.

(b) ISSUANCE OF REGULATIONS.—The President and the Secretary may issue such regulations as are necessary to carry out the provisions of this Act. Any such regulations issued to carry out the provisions of sections 5(a), 6(a), 7(a), or (8)(b) may apply to the financing, transporting, or other servicing of exports and the participation therein by any person. Any such regulations the purpose of which is to carry out the provisions of section 5, or of section (4)(a) for the purpose of administering the provisions of section 5, may be issued only after the regulations are submitted for review to the Secretary of Defense, the Secretary of State, and such other departments and agencies as the Secretary considers appropriate. The preceding sentence does not require the concurrence or approval of any official, department, or agency to which such regulations are submitted.

(c) AMENDMENTS TO REGULATIONS.—If the Secretary proposes to amend regulations issued under this Act, the Secretary shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives on the intent and rationale of such amendments. Such report shall evaluate the cost and burden to United States exporters of the proposed amendments in relation to any enhancement of licensing objectives. The Secretary shall consult with the technical advisory committees authorized under section 5(h) of this Act in formulating or amending regulations issued under this Act. The procedures defined by regulations in effect on January 1, 1984, with respect to sections 4 and 5 of this Act, shall remain in effect unless the Secretary determines, on the basis of substantial and reliable evidence, that specific change is necessary to enhance the prevention of diversions of exports which would prove detrimental to the national security of the United States or to reduce the licensing and paperwork burden on exporters and their distributors.

DEFINITIONS

SEC. 16. As used in this Act—

(1) the term "person" includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof;

(2) the term "United States person" means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern) and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President;

(3) the term "good" means any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, and excluding technical data;

(4) the term "technology" means the information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in in-

tangible form, such as training or technical services) that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data, but not the goods themselves;

(5) the term "export" means—

(A) an actual shipment, transfer, or transmission of goods or technology out of the United States;

(B) a transfer of goods or technology in the United States to an embassy or affiliate of a controlled country; or

(C) a transfer to any person of goods or technology either within the United States or outside of the United States with the knowledge or intent that the goods or technology will be shipped, transferred, or transmitted to an unauthorized recipient;

(6) the term "controlled country" means a controlled country under section 5(b)(1) of this Act;

(7) the term "United States" means the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, and includes the Outer Continental Shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)); and

(8) the term "Secretary" means the Secretary of Commerce.

EFFECT ON OTHER ACTS

SEC. 17. (a) IN GENERAL.—Except as otherwise provided in this Act, nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

(b) COORDINATION OF CONTROLS.—The authority granted to the President under this Act shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(c) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding any other provision of law, any product (1) which is standard equipment certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft, and (2) which is to be exported to a country other than a controlled country, shall be subject to export controls exclusively under this Act. Any such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act.

(d) NONPROLIFERATION CONTROLS.—(1) Nothing in section 5 or 6 of this Act shall be construed to supersede the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978.

(2) With respect to any export license application which, under the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978, is referred to the Subgroup of Nuclear Export Coordination or other interagency group, the provisions of section 10 of this Act shall apply with respect to such license applications only to the extent that they are consistent with such published procedures, except that if the processing of any such application under such procedures is not completed within 180 days after the receipt of the application by the

Secretary, the applicant shall have the rights of appeal and court action provided in section 10(j) of this Act.

(e) TERMINATION OF OTHER AUTHORITY.—On October 1, 1979, the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1611-1613d), is superseded.

(f) AGRICULTURAL ACT OF 1970.—Nothing in this Act shall affect the provisions of the last sentence of section 812 of the Agricultural Act of 1970 (7 U.S.C. 612c-3).

AUTHORIZATION OF APPROPRIATIONS

SEC. 18. (a) REQUIREMENT OF AUTHORIZING LEGISLATION.—(1) Notwithstanding any other provisions of law, money appropriated to the Department of Commerce for expenses to carry out the purposes of this Act may be obligated or expended only if—

(A) the appropriation thereof has been previously authorized by law enacted on or after the date of the enactment of the Export Administration Amendments Act of 1985; or

(B) the amount of all such obligations and expenditures does not exceed an amount previously prescribed by law enacted on or after such date.

(2) To the extent that legislation enacted after the making of an appropriation to carry out the purposes of this Act authorizes the obligation or expenditure thereof, the limitation contained in paragraph (1) shall have no effect.

(3) The provisions of this subsection shall not be superseded except by a provision of law enacted after the date of the enactment of the Export Administration Amendments Act of 1985 which specifically repeals, modifies, or supersedes the provisions of this subsection.

(b) AUTHORIZATION.—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

(1) $35,935,000 for each of the fiscal years 1987 and 1988, of which $12,746,000 shall be available for each such year only for enforcement, $2,000,000 shall be available for each such year only for foreign availability assessments under subsections (f) and (h)(6) of section 5, and $21,189,000 shall be available for each such year for all other activities under this Act; and

(2) such additional amounts for each of the fiscal years 1987 and 1988 as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.

EFFECTIVE DATE

SEC. 19. (a) EFFECTIVE DATE.—This Act shall take effect upon the expiration of the Export Administration Act of 1969.

(b) ISSUANCE OF REGULATIONS.—(1) Regulations implementing the provisions of section 10 of this Act shall be issued and take effect not later than July 1, 1980.

(2) Regulations implementing the provisions of section 7(c) of this Act shall be issued and take effect not later than January 1, 1980.

TERMINATION DATE

SEC. 20. The authority granted by this Act terminates on September 30, 1989.

SAVINGS PROVISIONS

SEC. 21. (a) IN GENERAL.—All, delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action which have been made, issued, conducted, or allowed to become effective under the Export Control Act of 1949 or the Export Administration Act of 1969 and which are in effect at the time this Act takes effect shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this Act.

(b) ADMINISTRATIVE PROCEEDINGS.—This Act shall not apply to any administrative proceedings commenced or any application for a license made, under the Export Administration Act of 1969, which is pending at the time this Act takes effect.

TECHNICAL AMENDMENTS

[SEC. 22. Technical amendments to the Arms Export Control Act, the Energy Policy and Conservation Act and the Internal Revenue Code of 1954.]

INTERNATIONAL INVESTMENT SURVEY ACT AUTHORIZATIONS

[SEC. 23. Provides authorization of funds for fiscal years 1980 and 1981 for the International Investment and Trade in Services Survey Act.]

MISCELLANEOUS

[SEC. 24. Amends Public Law 480.]

B. FOREIGN CORRUPT PRACTICES ACT OF 1977

Title I of Securities Exchange Act of 1934, as amended

[15 U.S.C. 78 dd-1, dd-2, ff, m, P.L. 95-213]

AN ACT To amend the Securities Exchange Act of 1934 to make it unlawful for an issuer of securities registered pursuant to section 12 of such Act or an issuer required to file reports pursuant to section 15(d) of such Act to make certain payments to foreign offici~~als and ot~~her foreign persons, to require such issuers to maintain accurate records, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—FOREIGN CORRUPT PRACTICES

SHORT TITLE

SEC. 101. This title may be cited as the "Foreign Corrupt Practices Act of 1977".

ACCOUNTING STANDARDS

SEC. 102. Section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(b)) is amended by inserting "(1)" after "(b)" and by adding at the end thereof the following:

"(2) Every issuer which has a class of securities registered pursuant to section 12 of this title and every issuer which is required to file reports pursuant to section 15(d) of this title shall—

"(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and

"(B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—

"(i) transactions are executed in accordance with management's general or specific authorization;

"(ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

"(iii) access to assets is permitted only in accordance with management's general or specific authorization; and

"(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

"(3)(A) With respect to matters concerning the national security of the United States, no duty or liability under paragraph (2) of this subsection shall be imposed upon any person acting in cooperation with the head of any Federal department or agency responsible for such matters if such act in cooperation with such head of a department or agency was done upon the specific, written directive of the head of such department or agency pursuant to Presidential authority to issue such directives. Each directive issued under this paragraph shall set forth the specific facts and circumstances with respect to which the provisions of this paragraph are to be invoked. Each such directive shall, unless renewed in writing, expire one year after the date of issuance.

"(B) Each head of a Federal department or agency of the United States who issues a directive pursuant to this paragraph shall maintain a complete file of all such directives and shall, on October 1 of each year, transmit a summary of matters covered by such directives in force at any time during the previous year to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.".

FOREIGN CORRUPT PRACTICES BY ISSUERS

SEC. 103. (a) The Securities Exchange Act of 1934 is amended by inserting after section 30 the following new section:

"FOREIGN CORRUPT PRACTICES BY ISSUERS

"SEC. 30A. (a) It shall be unlawful for any issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports under section 15(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

"(1) any foreign official for purposes of—

"(A) influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

"(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person;

"(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

"(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform its or his official functions; or

"(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person; or

"(3) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

"(A) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

"(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act of decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

"(b) As used in this section, the term 'foreign official' means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of such government or department, agency, or instrumentality. Such term does not include any employee of a foreign government or any department, agency, or instrumentality thereof whose duties are essentially ministerial or clerical.".

(b)(1) Section 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(a)) is amended by inserting "(other than section 30A)" immediately after "title" the first place it appears.

(2) Section 32 of the Securities Exchange Act of 1934 (15 U.S.C. 78ff) is amended by adding at the end thereof the following new subsection:

"(c)(1) Any issuer which violates section 30A(a) of this title shall, upon conviction, be fined not more than $1,000,000.

"(2) Any officer or director of an issuer, or any stockholder acting on behalf of such issuer, who willfully violates section 30A(a) of this title shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

"(3) Whenever an issuer is found to have violated section 30A(a) of this title, any employee or agent of such issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder of such issuer), and who willfully carried out the act or practice constituting such violation shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

"(4) Whenever a fine is imposed under paragraph (2) or (3) of this subsection upon any officer, director, stockholder, employee, or agent of an issuer, such fine shall not be paid, directly or indirectly, by such issuer.".

FOREIGN CORRUPT PRACTICES BY DOMESTIC CONCERNS

SEC. 104. (a) It shall be unlawful for any domestic concern, other than an issuer which is subject to section 30A of the Securities Exchange Act of 1934, or any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A) influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform its or his official functions; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person.

(b)(1)(A) Except as provided in subparagraph (B), any domestic concern which violates subsection (a) shall, upon conviction, be fined not more than $1,000,000.

(B) Any individual who is a domestic concern and who willfully violates subsection (a) shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

(2) Any officer or director of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsection (a) shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

(3) Whenever a domestic concern is found to have violated subsection (a) of this section, any employee or agent of such domestic concern who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such domestic concern), and who willfully carried out the act or practice constituting such violation shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

(4) Whenever a fine is imposed under paragraph (2) or (3) of this subsection upon any officer, director, stockholder, employee, or agent of a domestic concern, such fine shall not be paid, directly or indirectly, by such domestic concern.

(c) Whenever it appears to the Attorney General that any domestic concern, or officer, director, employee, agent, or stockholder thereof, is engaged, or is about to engage, in any act or practice constituting a violation of subsection (a) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing a permanent or temporary injunction or a temporary restraining order shall be granted without bond.

(d) As used in this section:

(1) The term "domestic concern" means (A) any individual who is a citizen, national, or resident of the United States; or (B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

(2) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality. Such term does not include any employee of a foreign government or any department, agency, or instrumentality thereof whose duties are essentially ministerial or clerical.

(3) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof. Such term includes the intrastate use of (A) a telephone or other interstate means of communication, or (B) any other interstate instrumentality.

C. DOMESTIC INTERNATIONAL SALES CORPORATION [DISC]

[Internal Revenue Code of 1954, 26 U.S.C. 991-997, P.L. 92-178, as amended by P.L. 93-482, P.L. 94-12, P.L. 94-455, P.L. 95-600, P.L. 96-39, P.L. 96-72, P.L. 97-248, P.L. 97-354, and P.L. 98-369]

Part IV—Domestic International Sales Corporations

Subpart A. Treatment of qualifying corporations.
Subpart B. Treatment of distributions to shareholders.

Subpart A—Treatment of Qualifying Corporations

Sec. 991. Taxation of a domestic international sales corporation.
Sec. 992. Requirements of a domestic international sales corporation.
Sec. 993. Definitions and special rules.
Sec. 994. Inter-company pricing rules.

SEC. 991. TAXATION OF A DOMESTIC INTERNATIONAL SALES CORPORATION.

For purposes of the taxes imposed by the subtitle upon a DISC (as defined in section 992(a)), a DISC shall not be subject to the taxes imposed by this subtitle except for the tax imposed by chapter 5.

SEC. 992. REQUIREMENTS OF A DOMESTIC INTERNATIONAL SALES CORPORATION.

(a) DEFINITION OF "DISC" AND "FORMER DISC".—

(1) DISC.—For purposes of this title, the term "DISC" means, with respect to any taxable year, a corporation which is incorporated under the laws of any State and satisfies the following conditions for the taxable year:

(A) 95 percent or more of the gross receipts (as defined in section 993(f)) of such corporation consist of qualified export receipts (as defined in section 993(a)),

(B) the adjusted basis of the qualified export assets (as defined in section 993(b)) of the corporation at the close of the taxable year equals or exceeds 95 percent of the sum of the adjusted basis of all assets of the corporation at the close of the taxable year,

(C) such corporation does not have more than one class of stock and the par or stated value of its outstanding stock is at least $2,500 on each day of the taxable year.

(D) the corporation has made an election pursuant to subsection (b) to be treated as a DISC and such election is in effect for the taxable year, and

(E) such corporation is not a member of any controlled group of which FSC is a member.

(2) STATUS AS DISC AFTER HAVING FILED A RETURN AS A DISC.—The Secretary shall prescribe regulations setting forth the conditions under and the extent to which a corporation which has filed a return as a DISC for a taxable year shall be treated as a

DISC for such taxable year for all purposes of this title, notwithstanding the fact that the corporation has failed to satisfy the conditions of paragraph (1).

(3) "FORMER DISC".—For purposes of this title, the term "former DISC" means, with respect to any taxable year, a corporation which is not a DISC for such year but was a DISC in a preceding taxable year and at the beginning of the taxable year has undistributed previously taxed income or accumulated DISC income.

(b) ELECTION.—

(1) ELECTION.—

(A) An election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

(B) Such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on the first day of the first taxable year for which such election is effective consent to such election.

(2) EFFECT OF ELECTION.—If a corporation makes an election under paragraph (1), then the provisions of this part shall apply to such corporation for the taxable year of the corporation for which made and for all succeeding taxable years and shall apply to each person who at any time is a shareholder of such corporation for all periods on or after the first day of the first taxable year of the corporation for which the election is effective.

(3) TERMINATION OF ELECTION.—

(A) REVOCATION.—An election under this subsection made by any corporation may be terminated by revocation of such election for any taxable year of the corporation after the first taxable year of the corporation for which the election is effective. A termination under this paragraph shall be effective with respect to such election—

(i) for the taxable year in which made, if made at any time during the first 90 days of such taxable year, or

(ii) for the taxable year following the taxable year in which made, if made after the close of such 90 days,

and for all succeeding taxable years of the corporation. Such termination shall be made in such manner as the Secretary shall prescribe by regulations.

(B) CONTINUED FAILURE TO BE DISC.—If a corporation is not a DISC for each of any 5 consecutive taxable years of the corporation for which an election under this subsection is effective, the election shall be terminated and not be in effect for any taxable year of the corporation after such 5th year.

(c) DISTRIBUTIONS TO MEET QUALIFICATION REQUIREMENTS.—

(1) IN GENERAL.—Subject to the conditions provided by paragraph (2), a corporation which for a taxable year does not satis-

fy a condition specified in paragraph (1)(A) (relating to gross receipts) or (1)(B) (relating to assets) of subsection (a) shall nevertheless be deemed to satisfy such condition for such year if it makes a pro rata distribution of property after the close of the taxable year to its shareholders (designated at the time of such distribution as a distribution to meet qualification requirements) with respect to their stock in an amount which is equal to—

(A) if the condition of subsection (a)(1)(A) is not satisfied, the portion of such corporation's taxable income attributable to its gross receipts which are not qualified export receipts for such year,

(B) if the condition of subsection (a)(1)(B) is not satisfied, the fair market value of those assets which are not qualified export assets on the last day of such taxable year, or

(C) if neither of such conditions is satisfied, the sum of the amounts required by subparagraphs (A) and (B).

(2) REASONABLE CAUSE FOR FAILURE.—The conditions under paragraph (1) shall be deemed satisfied in the case of a distribution made under such paragraph—

(A) if the failure to meet the requirements of subsection (a)(1) (A) or (B), and the failure to make such distribution prior to the date on which made, are due to reasonable cause; and

(B) the corporation pays, within the 30-day period beginning with the day on which such distribution is made, to the Secretary, if such corporation makes such distribution after the 15th day of the 9th month after the close of the taxable year, an amount determined by multiplying (i) the amount equal to 4½ percent of such distribution, by (ii) the number of its taxable years which begin after the taxable year with respect to which such distribution is made and before such distribution is made. For purposes of this title, any payment made pursuant to this paragraph shall be treated as interest.

(3) CERTAIN DISTRIBUTIONS MADE WITHIN 8½ MONTHS AFTER CLOSE OF TAXABLE YEAR DEEMED FOR REASONABLE CAUSE.—A distribution made on or before the 15th day of the 9th month after the close of the taxable year shall be deemed for reasonable cause for purposes of paragraph (2)(A) if—

(A) at least 70 percent of the gross receipts of such corporation for such taxable year consist of qualified export receipts, and

(B) the adjusted basis of the qualified export assets held by the corporation on the last day of each month of the taxable year equals or exceeds 70 percent of the sum of the adjusted basis of all assets held by the corporation on such day.

(d) INELIGIBLE CORPORATIONS.—The following corporations shall not be eligible to be treated as a DISC—

(1) a corporation exempt from tax by reason of section 501,

(2) a personal holding company (as defined in section 542),

(3) a financial institution to which section 581 or 593 applies,

(4) an insurance company subject to the tax imposed by subchapter L,

(5) a regulated investment company (as defined in section 851(a)),

(6) a China Trade Act corporation receiving the special deduction provided in section 941(a), or

(7) an S corporation

(e) Coordination With Personal Holding Company Provisions in Case of Certain Produced Film Rents.—If—

(1) a corporation (hereinafter in this subsection referred to as "subsidiary") was established to take advantage of the provisions of this part, and

(2) a second corporation (hereinafter in this subsection referred to as "parent") throughout the taxable year owns directly at least 80 percent of the stock of the subsidiary, then,

for purposes of applying subsection (d)(2) and section 541 (relating to personal holding company tax) to the subsidiary for the taxable year, there shall be taken into account under section 543(a)(5) (relating to produced film rents) any interest in a film acquired by the parent and transferred to the subsidiary as if such interest were acquired by the subsidiary at the time it was acquired by the parent.

SEC. 993. DEFINITIONS.

(a) Qualified Export Receipts.—

(1) General rule.—For purposes of this part, except as provided by regulations under paragraph (2), the qualified export receipts of a corporation are—

(A) gross receipts from the sale, exchange, or other disposition or export property,

(B) gross receipts from the lease or rental of export property, which is used by the lessee of such property outside the United States,

(C) gross receipts for services which are related and subsidiary to any qualified sale, exchange, lease, rental, or other disposition of export property by such corporation,

(D) gross receipts from the sale, exchange, or other disposition of qualified export assets (other than export property),

(E) dividends (or amounts includible in gross income under section 951) with respect to stock of a related foreign export corporation (as defined in subsection (e)),

(F) interest on any obligation which is a qualified export asset,

(G) gross receipts for engineering or architectural services for construction projects located (or proposed for location) outside the United States, and

(H) gross receipts for the performance of managerial services in furtherance of the production of other qualified export receipts of a DISC.

(2) Excluded receipts.—The Secretary may under regulations designate receipts from the sale, exchange, lease, rental, or other disposition of export property, and from services, as not being receipts described in paragraph (1) if he determines

that such sale, exchange, lease, rental, or other disposition, or furnishing of services—

(A) is for ultimate use in the United States;

(B) is accomplished by a subsidy granted by the United States or any instrumentality thereof;

(C) is for use by the United States or any instrumentality thereof where the use of such export property or services is required by law or regulation.

For purposes of this part, the term "qualified export receipts" does not include receipts from a corporation which is a DISC for its taxable year in which the receipts arise and which is a member of a controlled group (as defined in paragraph (3)) which includes the recipient corporation.

(3) DEFINITION OF CONTROLLED GROUP.—For purposes of this part, the term "controlled group" has the meaning assigned to the term "controlled group of corporations" by section 1563(a), except that the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears therein, and section 1563(b) shall not apply.

(b) QUALIFIED EXPORT ASSETS.—For purposes of this part, the qualified export assets of a corporation are—

(1) export property (as defined in subsection (c));

(2) assets used primarily in connection with the sale, lease, rental, storage, handling, transportation, packaging, assembly, or servicing of export property, or the performance of engineering or architectual services described in subparagraph (G) of subsection (a)(1) or managerial services in furtherance of the production of qualified export receipts described in subparagraphs (A), (B), (C), and (G) of subsection (a)(1);

(3) accounts receivable and evidences of indebtedness which arise by reason of transactions of such corporation or of another corporation which is a DISC and which is a member of a controlled group which includes such corporation described in subparagraphs (A), (B), (C), (D), (G), or (H) of subsection (a)(1);

(4) money, bank deposits, and other similar temporary investments, which are reasonably necessary to meet the working capital requirements of such corporation;

(5) obligations arising in connection with a producer's loan (as defined in subsection (d));

(6) stock or securities of a related foreign export corporation (as defined in subsection (e));

(7) obligations issued, guaranteed, or insured, in whole or in part, by the Export-Import Bank of the United States or the Foreign Credit Insurance Association in those cases where such obligations are acquired from such Bank or Association or from the seller or purchaser of the goods or services with respect to which such obligations arose;

(8) obligations issued by a domestic corporation organized solely for the purpose of financing sales of export property pursuant to an agreement with the Export-Import Bank of the United States under which such corporation makes export loans guaranteed by such bank; and

(9) amounts (other than reasonable working capital) on deposit in the United States that are utilized during the period

provided for in, and otherwise in accordance with, regulations prescribed by the Secretary to acquire other qualified export assets.

(c) Export Property.—

(1) In general.—For purposes of this part, the term "export property" means property—

(A) manufactured, produced, grown, or extracted in the United States by a person other than a DISC,

(B) held primarily for sale, lease, or rental, in the ordinary course of trade or business, by, or to, a DISC, for direct use, consumption, or disposition outside the United States, and

(C) not more than 50 percent of the fair market value of which is attributable to articles imported into the United States.

In applying subparagraph (C), the fair market value of any article imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation.

(2) Excluded property.— For purposes of this part, the term "export property" does not include—

(A) property leased or rented by a DISC for use by any member of a controlled group (as defined in subsection (a)(3)) which includes the DISC,

(B) patents, inventions, models, designs, formulas, or processes whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, for commercial or home use), good will, trademarks, trade brands, franchises, or other like property, or

(C) products of a character with respect to which a deduction for depletion is allowable (including oil, gas, coal, or uranium products) under section 613 or 613A, or

(D) products the export of which is prohibited or curtailed under section 7(a) of the Export Administration Act of 1979 to effectuate the policy set forth in paragraph (2)(C) of section 3 of such Act (relating to the protection of the domestic economy).

Subparagraph (C) shall not apply to any commodity or product at least 50 percent of the fair market value of which is attributable to manufacturing or processing, except that subparagraph (C) shall apply to any primary product from oil, gas, coal, or uranium. For purposes of the preceding sentence, the term "processing" does not include extracting or handling, packing packaging, grading, storing, or transporting.

(3) Property in short supply.—If the President determines that the supply of any property described in paragraph (1) is insufficient to meet the requirements of the domestic economy, he may by Executive order designate the property as in short supply. Any property so designated shall be treated as property not described in paragraph (1) during the period beginning with the date specified in the Executive order and ending with the date specified in an Executive order setting forth the Presi-

dent's determination that the property is no longer in short supply.

(d) Producer's Loans.—

(1) In general.—An obligation, subject to the rules provided in paragraphs (2) and (3), shall be treated as arising out of a producer's loan if—

(A) the loan, when added to the unpaid balance of all other producer's loans made by the DISC, does not exceed the accumulated DISC income at the beginning of the month in which the loan is made;

(B) the obligation is evidenced by a note (or other evidence of indebtedness) with a stated maturity date not more than 5 years from the date of the loan;

(C) the loan is made to a person engaged in the United States in the manufacturing, production, growing, or extraction of export property determined without regard to subparagraph (C) or (D) of subsection (c)(2), (referred to hereinafter as the "borrower"); and

(D) at the time of such loan it is designated as a producer's loan.

(2) Limitation.—An obligation shall be treated as arising out of a producer's loan only to the extent that such loan, when added to the unpaid balance of all other producer's loans to the borrower outstanding at the time such loan is made, does not exceed an amount determined by multiplying the sum of—

(A) the amount of the borrower's adjusted basis determined at the beginning of the borrower's taxable year in which the loan is made, in plant, machinery, and equipment, and supporting production facilities in the United States;

(B) the amount of the borrower's property held primarily for sale, lease, or rental, to customers in the ordinary course of trade or business, at the beginning of such taxable year; and

(C) the aggregate amount of the borrower's research and experimental expenditures (within the meaning of section 174) in the United States during all preceding taxable years beginning after December 31, 1971.

by the percentage which the borrower's receipts, during the 3 taxable years immediately preceding the taxable year (but not including any taxable year commencing prior to 1972) in which the loan is made, from the sale, lease, or rental outside the United States of property which would be export property (determined without regard to subparagraph (C) or (D) of subsection (c)(2) if held by a DISC is of the gross receipts during such 3 taxable years from the sale, lease, or rental of property held by such borrower primarily for sale, lease, or rental to customers in the ordinary course of the trade or business of such borrower.

(3) Increased investment requirements.—An obligation shall be treated as arising out of a producer's loan in a taxable year only to the extent that such loan, when added to the unpaid balance of all other producer's loans to the borrower

made during such taxable year, does not exceed an amount equal to—

(A) the amount by which the sum of the adjusted basis of assets described in paragraph (2)(A) and (B) on the last day of the taxable year in which the loan is made exceeds the sum of the adjusted basis of such assets on the first day of such taxable year; plus

(B) the aggregate amount of the borrower's research and experimental expenditures (within the meaning of section 174) in the United States during such taxable year.

(4) SPECIAL LIMITATION IN THE CASE OF DOMESTIC FILM MAKER.—

(A) IN GENERAL.—In the case of a borrower who is a domestic film maker and who incurs an obligation to a DISC for the making of a film, and such DISC is engaged in the trade or business of selling, leasing, or renting films which are export property, the limitation described in paragraph (2) may be determined (to the extent provided under regulations prescribed by the Secretary) on the basis of—

(i) the sum of the amounts described in subparagraphs (A), (B), and (C) thereof plus reasonable estimates of all such amounts to be incurred at any time by the borrower with respect to films which are commenced within the taxable year in which the loan is made, and

(ii) the percentage which, based on the experience of producers of similar films, the annual receipts of such producers from the sale, lease, or rental of such films outside the United States is of the annual gross receipts of such producers from the sale, lease, or rental of such films.

(B) DOMESTIC FILM MAKER.—For purposes of this paragraph, a borrower is a domestic film maker with respect to a film if—

(i) such borrower is a United States person within the meaning of section 7701(a)(30), except that with respect to a partnership, all of the partners must be United States persons, and with respect to a corporation, all of its officers and at least a majority of its directors must be United States persons;

(ii) such borrower is engaged in the trade or business of making the film with respect to which the loan is made;

(iii) the studio, if any, used or to be used for the taking of photographs and the recording of sound incorporated into such film is located in the United States;

(iv) the aggregate playing time of portions of such film photographed outside the United States does not or will not exceed 20 percent of the playing time of such film; and

(v) not less than 80 percent of the total amount paid or to be paid for services performed in the making of such film is paid or to be paid to persons who are

United States persons at the time such services are performed or consists of amounts which are fully taxable by the United States.

(C) SPECIAL RULES FOR APPLICATION OF SUBPARAGRAPH (B)(v).—For purposes of clause (v) of subparagraph (B)—

(i) there shall not be taken into account any amount which is contingent upon receipts or profits of the film and which is fully taxable by the United States (within the meaning of clause (ii)); and

(ii) any amount paid or to be paid to a United States person, to a nonresident alien individual, or to a corporation which furnishes the services of an officer or employee to the borrower with respect to the making of a film, shall be treated as fully taxable by the United States only if the total amount received by such person, individual, officer, or employee for services performed in the making of such film is fully included in gross income for purposes of this chapter.

(e) RELATED FOREIGN EXPORT CORPORATION.—In determining whether a corporation (hereinafter in this subsection referred to as "the domestic corporation") is a DISC—

(1) FOREIGN INTERNATIONAL SALES CORPORATION.—A foreign corporation is a related foreign export corporation if—

(A) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned directly by the domestic corporation,

(B) 95 percent or more of such foreign corporation's gross receipts for its taxable year ending with or within the taxable year of the domestic corporation consists of qualified export receipts described in subparagraphs (A), (B), (C), and (D) of subsection (a)(1) and interest on any obligation described in paragraphs (3) and (4) of subsection (b), and

(C) the adjusted basis of the qualified export assets (described in paragraphs (1), (2), (3), and (4) of subsection (b)) held by such foreign corporation at the close of such taxable year equals or exceeds 95 percent of the sum of the adjusted basis of all assets held by it at the close of such taxable year.

(2) REAL PROPERTY HOLDING COMPANY.—A foreign corporation is a related foreign export corporation if—

(A) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned directly by the domestic corporation, and

(B) its exclusive function is to hold real property for the exclusive use (under a lease or otherwise) of the domestic corporation.

(3) ASSOCIATED FOREIGN CORPORATION.—A foreign corporation is a related foreign export corporation if—

(A) less than 10 percent of the total combined voting power of all classes of stock entitled to vote of such foreign corporation is owned (within the meaning of section 1563(d) and (e)) by the domestic corporation or by a controlled group of corporations (within the meaning of section 1563) of which the domestic corporation is a member, and

(B) the ownership of stock or securities in such foreign corporation by the domestic corporation is determined (under regulations prescribed by the Secretary) to be reasonably in furtherance of a transaction or transactions giving rise to qualified export receipts of the domestic corporation.

(f) GROSS RECEIPTS.—For purposes of this part, the term "gross receipts" means the total receipts from the sale, lease, or rental of property held primarily for sale, lease, or rental in the ordinary course of trade or business, and gross income from all other sources. In the case of commissions on the sale, lease, or rental of property, the amount taken into account for purposes of this part as gross receipts shall be the gross receipts on the sale, lease, or rental of the property on which such commissions arose.

(g) UNITED STATES DEFINED.—For purposes of this part, the terms "United States" includes the Commonwealth of Puerto Rico and the possessions of the United States.

SEC. 994. INTER-COMPANY PRICING RULES.

(a) IN GENERAL.—In the case of a sale of export property to a DISC by a person described in section 482, the taxable income of such DISC and such person shall be based upon a transfer price which would allow such DISC to derive taxable income attributable to such sale (regardless of the sales price actually charged) in an amount which does not exceed the greatest of—

(1) 4 percent of the qualified export receipts on the sale of such property by the DISC plus 10 percent of the export promotion expenses of such DISC attributable to such receipts,

(2) 50 percent of the combined taxable income of such DISC and such person which is attributable to the qualified export receipts on such property derived as the result of a sale by the DISC plus 10 percent of the export promotion expenses of such DISC attributable to such receipts, or

(3) taxable income based upon the sale price actually charged (but subject to the rules provided in section 482).

(b) RULES FOR COMMISSIONS, RENTALS, AND MARGINAL COSTING.—The Secretary shall prescribe regulations setting forth—

(1) rules which are consistent with the rules set forth in subsection (a) for the application of this section in the case of commissions, rentals, and other income, and

(2) rules for the allocation of expenditures in computing combined taxable income under subsection (a)(2) in those cases where a DISC is seeking to establish or maintain a market for export property.

(c) EXPORT PROMOTION EXPENSES.—For purposes of this section, the term "export promotion expenses" means those expenses incurred to advance the distribution or sale of export property for use, consumption, or distribution outside of the United States, but does not include income taxes. Such expenses shall also include freight expenses to the extent of 50 percent of the cost of shipping export property aboard airplanes owned and operated by U.S. persons or ships documented under the laws of the United States in those cases where law or regulations do not require that such property be shipped aboard such airplanes or ships.

Subpart B—Treatment of Distributions to Shareholders

Sec. 995. Taxation of DISC income to shareholders.
Sec. 996. Rules for allocation in the case of distributions and losses.
Sec. 997. Special subchapter C rules.

SEC. 995. TAXATION OF DISC INCOME TO SHAREHOLDERS.

(a) GENERAL RULE.—A shareholder of a DISC or former DISC shall be subject to taxation on the earnings and profits of a DISC as provided in this chapter, but subject to the modifications of this subpart.

(b) DEEMED DISTRIBUTIONS.—

(1) DISTRIBUTIONS IN QUALIFIED YEARS.—A shareholder of a DISC shall be treated as having received a distribution taxable as a dividend with respect to his stock in an amount which is equal to his pro rata share of the sum (or, if smaller, the earnings and profits for the taxable year) of—

(A) the gross interest derived during the taxable year from producer's loans,

(B) the gain recognized by the DISC during the taxable year on the sale or exchange of property, other than property which in the hands of the DISC is a qualified export asset, previously transferred to it in a transaction in which gain was not recognized in whole or in part, but only to the extent that the transferor's gain on the previous transfer was not recognized.

(C) the gain (other than the gain described in subparagraph (B)) recognized by the DISC during the taxable year on the sale or exchange of property (other than property which in the hands of the DISC is stock in trade or other property described in section 1221(1)) previously transferred to it in a transaction in which gain was not recognized in whole or in part, but only to the extent that the transferor's gain on the previous transfer was not recognized and would have been treated as ordinary income if the property had been sold or exchanged rather than transferred to the DISC.

(D) 50 percent of the taxable income of the DISC for the taxable year attributable to military property.

(E) the taxable income of the DISC attributable to qualified export receipts of the DISC for the taxable year which exceed $10,000,000.

(F) the sum of—

(i) one-seventeenth of the excess of the taxable income of the DISC for the taxable year, before reduction for any distributions during the year, over the sum of the amounts deemed distributed for the taxable year under subparagraphs (A), (B), (C), (D), and (E),

(ii) an amount equal to the amount determined under clause (i) multiplied by the international boycott factor determined under section 999, and

(iii) any illegal bribe, kickback, or other payment (within the meaning of section 162(c)) paid by or on behalf of the DISC directly or indirectly to an official, employee, or agent in fact of a government, and

(G) the amount of foreign investment attributable to producer's loans (as defined in subsection (d)) of a DISC for the taxable year.

Distributions described in this paragraph shall be deemed to be received on the last day of the taxable year of the DISC in which the income was derived. In the case of a distribution described in subparagraph (G), earnings and profits for the taxable year shall include accumulated earnings and profits.

(2) DISTRIBUTIONS UPON DISQUALIFICATION.—

(A) A shareholder of a corporation which revoked its election to be treated as a DISC or failed to satisfy the conditions of section 992(a)(1) for a taxable year shall be deemed to have received (at the time specified in subparagraph (B)) a distribution taxable as a dividend equal to his pro rata share of the DISC income of such corporation accumulated during the immediately preceding consecutive taxable years for which the corporation was a DISC.

(B) Distributions described in subparagraph (A) shall be deemed to be received in equal installments on the last day of each of the 10 taxable years of the corporation following the year of the termination or disqualification described in subparagraph (A) (but in no case over more than twice the number of immediately preceding consecutive taxable years during which the corporation was a DISC).

(3) TAXABLE INCOME ATTRIBUTABLE TO MILITARY PROPERTY.—

(A) IN GENERAL.—For purposes of paragraph (1)(D), taxable income of a DISC for the taxable year attributable to military property shall be determined by only taking into account—

(i) the gross income of the DISC for the taxable year which is attributable to military property, and

(ii) the deductibles which are properly apportioned or allocated to such income.

(B) MILITARY PROPERTY.—For purposes of subparagraph (A), the term "military property" means any property which is an arm, ammunition, or implement of war designated in the munitions list published pursuant to the Military Security Act of 1954 (22 U.S.C. 1934).

(4) AGGREGATION OF QUALIFIED EXPORT RECEIPTS.—

(A) IN GENERAL.—For purposes of applying paragraph (1)(E), all DISC's which are members of the same controlled group shall be treated as a single corporation.

(B) ALLOCATION.—The dollar amount under paragraph (1)(E) shall be allocated among the DISC's which are members of the same controlled group in a manner provided in regulations prescribed by the Secretary.

(c) GAIN ON DISPOSITION OF STOCK IN A DISC.—

(1) IN GENERAL.—If—

(A) a shareholder disposes of stock in a DISC or former DISC any gain recognized on such disposition shall be included in gross income as a dividend to the extent provided in paragraph (2),

(B) stock of a DISC or former DISC is disposed of in a transaction in which the separate corporate existence of the DISC or former DISC is terminated other than by a mere change in place of organization, however effected, any gain realized on the disposition of such stock in the transaction shall be recognized notwithstanding any other provision of this title to the extent provided in paragraph (2) and to the extent so recognized shall be included in gross income as a dividend, or

(C) a shareholder distributes, sells, or exchanges stock in a DISC or former DISC in a transaction to which section 311, 336, or 337 applies, then an amount equal to the excess of the fair market value of such stock over its adjusted basis in the hands of the shareholder shall, notwithstanding any provision of this title, be included in gross income of the shareholder as a dividend to the extent provided in paragraph (2).

Subparagraph (C) shall not apply if the person receiving the stock in the disposition has a holding period for the stock which includes the period for which the stock was held by the shareholder disposing of such stock.

(2) AMOUNT INCLUDED.—The amounts described in paragraph (1) shall be included in gross income as a dividend to the extent of the accumulated DISC income of the DISC or former DISC which is attributable to the stock disposed of and which was accumulated in taxable years of such corporation during the period or periods the stock disposed of was held by the shareholder which disposed of such stock.

(d) FOREIGN INVESTMENT ATTRIBUTABLE TO DISC EARNINGS.—For purposes of this part—

(1) IN GENERAL.—The amount of foreign investment attributable to producer's loans of a DISC for a taxable year shall be the smallest of—

(A) the net increase in foreign assets by members of the controlled group (as defined in section 993(a)(3)) which includes the DISC,

(B) the actual foreign investment by domestic members of such group, or

(C) the amount of outstanding producer's loans by such DISC to members of such controlled group.

(2) NET INCREASE IN FOREIGN ASSETS.—The term "net increase in foreign assets" of a controlled group means the excess of—

(A) the amount incurred by such group to acquire assets (described in section 1231(b)) located outside the United States over,

(B) the sum of—

(i) the depreciation with respect to assets of such group located outside the United States;

(ii) the outstanding amount of stock or debt obligations of such group issued after December 31, 1971, to persons other than the United States persons or any member of such group;

(iii) one-half the earnings and profits of foreign members of such group and foreign branches of domestic members of such group;

(iv) one-half the royalties and fees paid by foreign members of such group to domestic members of such group; and

(v) the uncommitted transitional funds of the group as determined under paragraph (4).

For purposes of this paragraph, assets which are qualified export assets of a DISC (or would be qualified export assets if owned by a DISC) shall not be taken into account. Amounts described in this paragraph (other than in subparagraphs (B)(ii) and (v)) shall be taken into account only to the extent they are attributable to taxable years beginning after December 31, 1971.

(3) ACTUAL FOREIGN INVESTMENT.—The term "actual foreign investment" by domestic members of a controlled group means the sum of—

(A) contributions to capital of foreign members of the group by domestic members of the group after December 31, 1971.

(B) the outstanding amount of stock or debt obligations of foreign members of such group (other than normal trade indebtedness) issued after December 31, 1971, to domestic members of such group,

(C) amounts transferred by domestic members of the group after December 31, 1971, to foreign branches of such members, and

(D) one-half the earnings and profits of foreign members of such group and foreign branches of domestic members of such group for taxable years beginning after December 31, 1971.

As used in this subsection, the term "domestic member" means a domestic corporation which is a member of a controlled group (as defined in section 993(a)(3)), and the term "foreign member" means a foreign corporation which is a member of such a controlled group.

(4) UNCOMMITTED TRANSITIONAL FUNDS.—The uncommitted transitional funds of the group shall be an amount equal to the sum of—

(A) the excess of—

(i) the amount of stock or debt obligations of domestic members of such group outstanding on December 31, 1971, and issued on or after January 1, 1968, to persons other than United States persons or any members of such group, but only to the extent the taxpayer establishes that such amount constitutes a long-term borrowing for purposes of the foreign direct investment program, over

(ii) the net amount of actual foreign investment by domestic members of such group during the period that such stock or debt obligations have been outstanding; and

(B) the amount of liquid assets to the extent not included in subparagraph (A) held by foreign members of such group and foreign branches of domestic members of such group on October 31, 1971, in excess of their reasonable working capital needs on such date.

For purposes of this paragraph, the term "liquid assets" means money, bank deposits (not including time deposits), and indebtedness of 2 years or less to maturity on the date of acquisition; and the actual foreign investment shall be determined under paragraph (3) without regard to the date in subparagraph (A) of such paragraph and without regard to subparagraph (D) of such paragraph.

(5) SPECIAL RULE.—Under regulations prescribed by the Secretary the determinations under this subsection shall be made on a cumulative basis with proper adjustments for amounts previously taken into account.

(e) [Repealed effective for transactions after Dec. 31, 1984, in taxable years ending after such date.] DEFINITIONS AND SPECIAL RULES RELATING TO COMPUTATION OF TAXABLE INCOME ATTRIBUTABLE TO BASE PERIOD EXPORT GROSS RECEIPTS.—

(1) TAXABLE INCOME ATTRIBUTABLE TO BASE PERIOD EXPORT GROSS RECEIPTS.—For purposes of this section, the taxable income attributable to base period export gross receipts shall be an amount equal to that portion of the adjusted taxable income of a DISC which—

(A) the amount of the adjusted base period export gross receipts, bears to

(B) the amount of the export gross receipts of the DISC for the taxable year.

(2) ADJUSTED TAXABLE INCOME.—For purposes of this section, the term "adjusted taxable income" means the income of a DISC for the taxable year, reduced by the amounts described in subparagraphs (A), (B), (C), and (D) of paragraph (1) of subsection (b).

(3) ADJUSTED BASE PERIOD EXPORT GROSS RECEIPTS.—For purposes of this section, the term "adjusted base period export gross receipts" means 67 percent of the average of the export gross receipts of the DISC for taxable years during the base period (as defined in paragraph (5)). For purposes of the preceding sentence, if any property would not qualify during the taxable year as export property by reason of section 993(c)(2), gross receipts from such property shall be excluded from export gross receipts during the taxable years on the base period.

(4) EXPORT GROSS RECEIPTS.—For purposes of this section, the term "export gross receipts" means—

(A) qualified export receipts described in subparagraphs (A), (B), (C), (G), and (H) of section 993(a)(1), reduced by

(B) 50 percent of such qualified export receipts which are attributable to military property (as defined in subsection (b)(3)(B)).

(5) BASE PERIOD.—For purposes of paragraph (3)—

(A) for any taxable year beginning before 1980, the base period shall be the taxable years beginning in 1972, 1973, 1974, and 1975, and

(B) for any taxable year beginning in any calendar year after 1979, the base period shall be the taxable years beginning in the fourth, fifth, sixth, and seventh calendar years preceding such calendar year.

(6) NO BASE PERIOD YEAR.—If a DISC did not have a taxable year beginning in a calendar year specified in paragraph (5), then, for purposes of computing the adjusted base period export gross receipts, such DISC is deemed to have a taxable year and export gross receipts of zero for the year.

(7) SHORT TAXABLE YEAR.—The Secreatry shall prescribe such regulations as he deems necessary with respect to a short taxable year for purposes of computing base period export gross receipts of a DISC, or a short taxable year in which deemed distributions (as described in subsection (b)) are made, including the circumstances under which the short taxable year shall be annualized, and the proper method of annualization.

(8) CONTROLLED GROUP.—If more than one member of a controlled group (as defined in section 993(a)(3)) for the taxable year qualifies as a DISC, then subsection (b)(1)(E), this subsection, and subsection (f) shall each be applied in a manner provided by regulations prescribed by the Secretary by aggregating the export gross receipts and taxable income of such DISC's for the taxable year and by aggregating the export gross receipts of such DISCs for each taxable year in the base period.

(9) SPECIAL RULE WHERE THE OWNERSHIP OF DISC STOCK AND THE TRADE OR BUSINESS GIVING RISE TO EXPORT GROSS RECEIPTS OF THE DISC ARE SEPARATED.—

(A) IN GENERAL.—If, at any time after the beginning of the base period, there has been a separation of the ownership of the stock in the DISC from the ownership of the trade or business which (during the base period) produced the export gross receipts of the DISC, then the persons who own the trade or business during the taxable year shall be treated as having had additional export gross receipts during the base period attributable to such trade or business.

(B) EXCEPTIONS.—Subparagraph (A) shall not apply—

(i) where the stock in the DISC and the trade or business are owned throughout the taxable year by members of the same controlled group, and

(ii) to the extent that the taxpayers's ownership of the stock in the DISC for the taxable year is proportionate to his ownership during the taxable year of the trade or business.

(10) DISC BASE PERIOD ATTRIBUTED THROUGH SHAREHOLDERS IN CERTAIN CASES.—

(A) IN GENERAL.—If—

(i) if any person owns 5 percent or more of the stock of a DISC (hereinafter in this paragraph referred to as "first DISC"), and

(ii) such person at any time during the base period of the first DISC owned 5 percent or more of the stock of a second DISC,

then, to the extent provided in such regulations as the Secretary may prescribe to prevent circumvention of the application of subsection (b)(1)(E), an amount equal to such shareholder's share of the base period export gross receipts of the second DISC shall be added to the base period export gross receipts of the first DISC.

(B) OWNERSHIP OF STOCK.—For purposes of subparagraph (A), the ownership of stock shall be determined under section 318.

(e) CERTAIN TRANSFERS OF DISC ASSETS.—If—

(1) a corporation owns, directly or indirectly, all of the stock of a subsidiary and a DISC,

(2) the subsidiary has been engaged in the active conduct of a trade or business (within the meaning of section 355(b)) throughout the 5-year period ending on the date of the transfer and continues to be so engaged thereafter, and

(3) during the taxable year of the subsidiary in which its stock is transferred and its preceding taxable year, such trade or business gives rise to qualified export receipts of the subsidiary and the DISC.

then, under such terms and conditions as the Secretary by regulations shall prescribe, transfers of assets, stock, or both will be deemed to be a reorganization within the meaning of section 368, a transaction to which section 355 applies, an exchange of stock to which section 351 applies, or a combination thereof. The preceding sentence shall apply only to the extent that the transfer or transfers involved are for the purpose of preventing the separation of the ownership of the stock in the DISC from the ownership of the trade or business which (during the base period) produced the export gross receipts of the DISC.

(f) [Repealed effective for transactions after Dec. 31, 1984, in taxable years ending after such date.] SMALL DISC's.—

(1) ADJUSTED TAXABLE INCOME OF $100,000 OR LESS.—If a DISC has adjusted taxable income of $100,000 or less for a taxable year, subsection (b)(1)(E) shall not apply with respect to such year.

(2) SPECIAL RULE.—If a DISC has adjusted taxable income of more than $100,000 for a taxable year, then the amount taken into account under subsection (b)(1)(E) shall be deemed to be an amount equal to the excess (if any) of—

(A) the amount which would (but for this paragraph) be taken into account under subsection (b)(1)(E), over

(B) twice the excess (if any) of $150,000 over the adjusted taxable income.

(f) INTEREST ON DISC-RELATED DEFERRED TAX LIABILITY.—

(1) IN GENERAL.—A shareholder of a DISC shall pay for each taxable year interest in an amount equal to the product of—

(A) the shareholder's DISC-related deferred tax liability for such year, and

(B) the base period T-bill rate.

(2) SHAREHOLDER'S DISC-RELATED DEFERRED TAX LIABILITY.—For purposes of this subsection—

(A) IN GENERAL.—The term "shareholder's DISC-related deferred tax liability" means, with respect to any taxable year of a shareholder of a DISC, the excess of—

(i) the amount which would be the tax liability of the shareholder for the taxable year if the deferred DISC income of such shareholder for such taxable year were included in gross income as ordinary income, over

(ii) the actual amount of the tax liability of such shareholder for such taxable year.

Determinations under the preceding sentence shall be made without regard to carrybacks to such taxable year.

(B) ADJUSTMENTS FOR LOSSES, CREDITS, AND OTHER ITEMS.—The Secretary shall prescribe regulations which provide such adjustments—

(i) to the accounts of the DISC, and

(ii) to the amount of any carryover or carryback of the shareholder,

as may be necessary or appropriate in the case of net operating losses, credits, and carryovers, and carrybacks of losses and credits.

(C) TAX LIABILITY.—The term "tax liability" means the amount of the tax imposed by this chapter for the taxable year reduced by credits allowable against such tax (other than credits allowable under sections 31, 32, and 34).

(3) DEFERRED DISC INCOME.—For purposes of this subsection—

(A) IN GENERAL.—The term "deferred DISC income" means, with respect to any taxable year of a shareholder, the excess of—

(i) the shareholder's pro rata share of accumulated DISC income (for periods after 1984) of the DISC as of the close of the computation year, over

(ii) the amount of the distributions-in-excess-of-income for the taxable year of the DISC following the computation year.

(B) COMPUTATION YEAR.—For purposes of applying subparagraph (A) with respect to any taxable year of a shareholder, the computation year is the taxable year of the DISC which ends with (or within) the taxable year of the shareholder which precedes the taxable year of the shareholder for which the amount of deferred DISC income is being determined.

(C) DISTRIBUTIONS-IN-EXCESS-OF-INCOME.—For purposes of subparagraph (A), the term "distributions-in-excess-of-income" means, with respect to any taxable year of a DISC, the excess (if any) of—

(i) the amount of actual distributions to the shareholder out of accumulated DISC income, over

(ii) the shareholder's pro rata share of the DISC income for such taxable year.

(3) BASE PERIOD T-BILL RATE.—For purposes of this subsection, the term "base period T-bill rate" means the annual rate of in-

terest determined by the Secretary to be equivalent to the average investment yield of United States Treasury bills with maturities of 52 weeks which were auctioned during the 1-year period ending on September 30 of the calendar year ending with (or of the most recent calendar year ending before) the close of the taxable year of the shareholder.

(4) SHORT YEARS.—The Secretary shall prescribe such regulations as may be necessary for the application of this subsection to short years of the DISC, the shareholder, or both.

(5) PAYMENT AND ASSESSMENT AND COLLECTION OF INTEREST.—The interest accrued during any taxable year which a shareholder is required to pay under paragraph (1) shall be treated, for purposes of this title, as interest payable under section 6601 and shall be paid by the shareholder at the time the tax imposed by this chapter for such taxable year is required to be paid.

SEC. 996. RULES FOR ALLOCATION IN THE CASE IN DISTRIBUTIONS AND LOSSES.

(a) RULES FOR ACTUAL DISTRIBUTIONS AND CERTAIN DEEMED DISTRIBUTIONS.—

(1) IN GENERAL.—Any actual distribution (other than a distribution described in paragraph (2) or to which section 995(c) applies) to a shareholder by a DISC (or former DISC) which is made out of earnings and profits shall be treated as made—

(A) first, out of previously taxed income, to the extent thereof,

(B) second, out of accumulated DISC income, to the extent thereof, and

(C) finally, out of other earnings and profits.

(2) QUALIFYING DISTRIBUTIONS.—Any actual distribution made pursuant to section 992(c) (relating to distributions to meet qualification requirements), and any deemed distribution pursuant to section 995(b)(1)(G) (relating to foreign investment attributable to producer's loans), shall be treated as made—

(A) first, out of accumulated DISC income, to the extent thereof,

(B) second, out of the earnings and profits described in paragraph (1)(C), to the extent thereof, and

(C) finally, out of previously taxed income.

In the case of any amount of any actual distribution made pursuant to section 992(c) which is required to satisfy the condition of section 992(a)(1)(A), the preceding sentence shall apply to one-half of such amount, and paragraph (1) shall apply to the remaining one-half of such amount.

(3) EXCLUSION FROM GROSS INCOME.—Amounts distributed out of previously taxed income shall be excluded by the distributee from gross income except for gains described in subsection (e)(2), and shall reduce the amount of the previously taxed income.

(b) ORDERING RULES FOR LOSSES.—If for any taxable year a DISC, or a former DISC, incurs a deficit in earnings and profits, such deficit shall be chargeable—

(1) first, to earnings and profits described in subsection (a)(1)(C), to the extent thereof,

(2) second, to accumulated DISC income, to the extent thereof, and

(3) finally, to previously taxed income, except that a deficit in earnings and profits shall not be applied against accumulated FISC income which has been determined is to be deemed distributed to the shareholders (pursuant to section 995(b)(2)(A)) as a result of a revocation of election or other disqualification.

(c) Priority of Distributions.—Any actual distribution made during a taxable year shall be treated as being made subsequent to any deemed distribution made during such year. Any actual distribution made pursuant to section 992(c) (relating to distributions to meet qualification requirements) shall be treated as being made before any other actual distributions during the taxable year.

(d) Subsequent Effect of Previous Disposition of DISC Stock.—

(1) Shareholder previously taxed income adjustment.—If—

(A) gain with respect to a share of stock of a DISC or former DISC is treated under section 995(c) as a dividend or as ordinary income, and

(B) any person subsequently receives an actual distribution made out of accumulated DISC income, or a deemed distribution made pursuant to section 995(b)(2), with respect to such share,

such person shall treat such distribution in the same manner as a distribution from previously taxed income to the extent that (i) the gain referred to in subparagraph (A), exceeds (ii) any other amounts with respect to such share which were treated under this paragraph as made from previously taxed income. In applying this paragraph with respect to a share of stock in a DISC or former DISC, gain on the acquisition of such share by the DISC or former DISC or gain on a transaction prior to such acquisition shall not be considered gain referred to in subparagraph (A).

(2) Corporate adjustment upon redemption.—If section 995(c) applies to a redemption of stock in a DISC or former DISC, the accumulated DISC income shall be reduced by an amount equal to the gain described in section 995(c) with respect to such stock which is (or has been) treated as ordinary income, except to the extent distributions with respect to such stock have been treated under paragraph (1).

(e) Adjustment to Basis.—

(1) Additions to basis.—Amounts representing deemed distributions as provided in section 995(b) shall increase the basis of the stock with respect to which the distribution is made.

(2) Reductions of basis.—The portion of an actual distribution made out of previously taxed income shall reduce the basis of the stock with respect to which it is made, and to the extent that it exceeds the adjusted basis of such stock, shall be treated as gain from the sale or exchange of property. In the case of stock includible in the gross estate of a decedent for

which an election is made under section 2032 (relating to alternate valuation), this paragraph shall not apply to any distribution made after the date of the decedent's death and before the alternate valuation date provided by section 2032.

(f) DEFINITIONS OF DIVISIONS OF EARNINGS AND PROFITS.—For purposes of this part:

(1) DISC INCOME.—The earnings and profits derived by a corporation during a taxable year in which such corporation is a DISC, before reduction for any distributions during the year, but reduced by amounts deemed distributed under section 995(b)(1), shall constitute the DISC income for such year. The earnings and profits of a DISC for a taxable year include any amounts includible in such DISC's gross income pursuant to section 951(a) for such year. Accumulated DISC income shall be reduced by deemed distributions under section 995(b)(2).

(2) PREVIOUSLY TAXED INCOME.—Earnings and profits deemed distributed under section 995(b) for a taxable year shall constitute previously taxed income for such year.

(3) OTHER EARNINGS AND PROFITS.—The earnings and profits for a taxable year which are described in neither paragraph (1) nor (2) shall constitute the other earnings and profits for such year.

(g) EFFECTIVELY CONNECTED INCOME.—In the case of a shareholder who is a nonresident alien individual or a foreign corporation, trust, or estate, gains referred to in section 995(c) and all distributions out of accumulated DISC income including deemed distributions shall be treated as gains and distributions which are effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States and which are derived from sources within the United States.

SEC. 997. SPECIAL SUBCHAPTER C RULES.

For purposes of applying the provisions of subchapter C of chapter 1, any distribution in property to a corporation by a DISC or former DISC which is made out of previously taxed income or accumulated DISC income shall—

(1) be treated as a distribution in the same amount as if such distribution of property were made to an individual, and

(2) have a basis, in the hands of the recipient corporation, equal to the amount determined under paragraph (1).

D. FOREIGN SALES CORPORATION [FSC]

Title VIII of Tax Reform Act of 1984, Division A, Deficit Reduction Act of 1984

[Internal Revenue Code of 1954, 26 U.S.C. 921-927, as added by P.L. 98-369]

Subpart C—Taxation of Foreign Sales Corporations

Sec. 921. Exempt foreign trade income excluded from gross income.
Sec. 922. FSC defined.
Sec. 923. Exempt foreign trade income.
Sec. 924. Foreign trading gross receipts.
Sec. 925. Transfer pricing rules.
Sec. 926. Distributions to shareholders.
Sec. 927. Other definitions and special rules.

SEC. 921. EXEMPT FOREIGN TRADE INCOME EXCLUDED FROM GROSS INCOME.

(a) Exclusion.—Exempt foreign trade income of a FSC shall be treated as foreign source income which is not effectively connected with the conduct of a trade or business within the United States.

(b) Proportionate Allocation of Deductions to Exempt Foreign Trade Income.—Any deductions of the FSC properly apportioned and allocated to the foreign trade income derived by a FSC from any transaction shall be allocated between—

(1) the exempt foreign trade income derived from such transaction, and

(2) the foreign trade income (other than exempt foreign trade income) derived from such transaction on a proportionate basis.

(c) Denial of Credits.—Notwithstanding any other provision of this chapter, no credit (other than a credit allowable under section 27(a), 33, or 34) shall be allowed under this chapter to any FSC.

(d) Foreign Trade Income, Investment Income, and Carrying Charges Treated as Effectively Connected With United States Business.—For purposes of this chapter—

(1) all foreign trade income of a FSC other than—

(A) exempt foreign trade income, and

(B) section 923(a)(2) non-exempt income,

(2) all interest, dividends, royalties, and other investment income received or accrued by a FSC, and

(3) all carrying charges received or accrued by a FSC, shall be treated as income effectively connected with a trade or business conducted through a permanent establishment of such corporation within the United States. Income described in paragraph (1) shall be treated as derived from sources within the United States.

SEC. 922. FSC DEFINED.

(a) FSC Defined.—For purposes of this title, the term "FSC" means any corporation—

(1) which—

(A) was created or organized—

(i) under the laws of any foreign country which meets the requirements of section 927(e)(3), or

(ii) under the laws applicable to any possession of the United States,

(B) has no more than 25 shareholders at any time during the taxable year,

(C) does not have any preferred stock outstanding at any time during the taxable year,

(D) during the taxable year—

(i) maintains an office located outside the United States in a foreign country which meets the requirements of section 927(e)(3) or in any possession of the United States,

(ii) maintains a set of the permanent books of account (including invoices) of such corporation at such office, and

(iii) maintains at a location within the United States the records which such corporation is required to keep under section 6001,

(E) at all times during the taxable year, has a board of directors which includes at least one individual who is not a resident of The United States, and

(F) is not a member, at any time during the taxable year, of any controlled group of corporations of which a DISC is a member, and

(2) which has made an election (at the time and in the manner provided in section 927(f)(1)) which is in effect for the taxable year to be treated as a FSC.

(b) Small FSC Defined.—For purposes of this title, a FSC is a small FSC with respect to any taxable year if—

(1) such corporation has made an election (at the time and in the manner provided in section 927(f)(1)) which is in effect for the taxable year to be treated as a small FSC, and

(2) such corporation is not a member, at any time during the taxable year, of a controlled group of corporations which includes a FSC unless such other FSC has also made an election under paragraph (1) which is in effect for such year.

SEC. 923. EXEMPT FOREIGN TRADE INCOME.

(a) Exempt Foreign Trade Income.—For purposes of this subpart—

(1) In general.—The term "exempt foreign trade income" means the aggregate amount of all foreign trade income of a FSC for the taxable year which is described in paragraph (2) or (3).

(2) Income determined without regard to administrative pricing rules.—In the case of any transaction to which paragraph (3) does not apply, 32 percent of the foreign trade income derived from such transaction shall be treated as described in this paragraph. For purposes of the preceding sentence, foreign trade income shall not include any income properly allocable

to excluded property described in subparagraph (B) of section 927(a)(2) (relating to intangibles).

(3) Income determined without regard to administrative pricing rules.—In the case of any transaction with respect to which paragraph (1) or (2) of section 925(a) (or the corresponding provisions of the regulations prescribed under section 925(b)) applies, $^{16}/_{23}$ of the foreign trade income derived from such transaction shall be treated as described in this paragraph.

(4) Special rule for foreign trade income allocable to a cooperative.—

(A) In general.—In any case in which a qualified cooperative is a shareholder of a FSC, paragraph (3) shall be applied with respect to that portion of the foreign trade income of such FSC for any taxable year which is properly allocable to the marketing of agricultural or horticultural products (or the providing of related services) by such cooperative by substituting "100 percent" for "$^{16}/_{23}$".

(B) Paragraph only to apply to amounts FSC distributes.—Subparagraph (A) shall not apply for any taxable year unless the FSC distributes to the qualified cooperative the amount which (but for such subparagraph) would not be treated as exempt foreign trade income. Any distribution under this subparagraph for any taxable year—

(i) shall be made before the due date for filing the return of tax for such taxable year, but

(ii) shall be treated as made on the last day of such taxable year.

(5) Special rule for military property.—Under regulations prescribed by the Secretary, that portion of the foreign trading gross receipts of the FSC for the taxable year attributable to the disposition of, or services relating to, military property (within the meaning of section 995(b)(3)(B)) which may be treated as exempt foreign trade income shall equal 50 percent of the amount which (but for this paragraph) would be treated as exempt foreign trade income.

(b) Foreign Trade Income Defined.—For purposes of this subpart, the term "foreign trade income" means the gross income of a FSC attributable to foreign trading gross receipts.

SEC. 924. FOREIGN TRADING GROSS RECEIPTS.

(a) In General.—Except as otherwise provided in this section, for purposes of this subpart, the term "foreign trading gross receipts" means the gross receipts of any FSC which are—

(1) from the sale, exchange, or other disposition of export property,

(2) from the lease or rental of export property for use by the lessee outside the United States,

(3) for services which are related and subsidiary to—

(A) any sale, exchange, or other disposition of export property by such corporation, or

(B) any lease or rental of export property described in paragraph (2) by such corporation,

(4) for engineering or architectural services for construction projects located (or proposed for location) outside the United States, or

(5) for the performance of managerial services for an unrelated FSC or DISC in furtherance of the production of foreign trading gross receipts described in paragraph (1), (2) or (3).

Paragraph (5) shall not apply to a FSC for any taxable year unless at least 50 percent of its gross receipts for such taxable year is derived from activities described in paragraph (1), (2), or (3).

(b) FOREIGN MANAGEMENT AND FOREIGN ECONOMIC PROCESS REQUIREMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2)—

(A) a FSC shall be treated as having foreign trading gross receipts for the taxable year only if the management of such corporation during such taxable year takes place outside the United States as required by subsection (c), and

(B) a FSC has foreign trading gross receipts from any transaction only if economic processes with respect to such transaction take place outside the United States as required by subsection (d).

(2) EXCEPTION FOR SMALL FSC.—

(A) IN GENERAL.—Paragraph (1) shall not apply with respect to any small FSC.

(B) LIMITATION ON AMOUNT OF FOREIGN TRADING GROSS RECEIPTS OF SMALL FSC TAKEN INTO ACCOUNT.—

(i) IN GENERAL.—Any foreign trading gross receipts of a small FSC for the taxable year which exceed $5,000,000 shall not be taken into account in determining the exempt foreign trade income of such corporation and shall not be taken into account under any other provision of this subpart.

(ii) ALLOCATION OF LIMITATION.—If the foreign trading gross receipts of a small FSC exceed the limitation of clause (i), the corporation may allocate such limitation among such gross receipts in such manner as it may select (at such time and in such manner as may be prescribed in regulations).

(iii) RECEIPTS OF CONTROLLED GROUP AGGREGATED.—For purposes of applying clauses (i) and (ii), all small FSC's which are members of the same controlled group of corporations shall be treated as a single corporation.

(iv) ALLOCATION OF LIMITATION AMONG MEMBERS OF CONTROLLED GROUP.—The limitation under clause (i) shall be allocated among the foreign trading gross receipts of small FSC's which are members of the same controlled group of corporations in a manner provided in regulations prescribed by the Secretary.

(c) REQUIREMENT THAT FSC BE MANAGED OUTSIDE THE UNITED STATES.—The management of a FSC meets the requirements of this subsection for the taxable year if—

(1) all meetings of the board of directors of the corporation, and all meetings of the shareholders of the corporation, are outside the United States,

(2) the principal bank account of the corporation is maintained outside the United States at all times during the taxable year, and

(3) all dividends, legal and accounting fees, and salaries of officers and members of the board of directors of the corporation disbursed during the taxable year are disbursed out of bank accounts of the corporation maintained outside the United States.

(d) REQUIREMENT THAT ECONOMIC PROCESSES TAKE PLACE OUTSIDE THE UNITED STATES.—

(1) IN GENERAL.—The requirements of this subsection are met with respect to the gross receipts of a FSC derived from any transaction if—

(A) such corporation (or any person acting under a contract with such corporation) has participated outside the United States in the solicitation (other than advertising), the negotiation, or the making of the contract relating to such transaction, and

(B) the foreign direct costs incurred by the FSC attributable to the transaction equal or exceed 50 percent of the total direct costs attributable to the transaction.

(2) ALTERNATIVE 85-PERCENT TEST.—A corporation shall be treated as satisfying the requirements of paragraph (1)(B) with respect to any transaction if, with respect to each of at least 2 paragraphs of subsection (e), the foreign direct costs incurred by such corporation attributable to activities described in such paragraphs equal or exceed 85 percent of the total direct costs attributable to activities described in such paragraph.

(3) DEFINITIONS.—For purposes of this subsection—

(A) TOTAL DIRECT COSTS.—The term "total direct costs" means, with respect to any transaction, the total direct costs incurred by the FSC attributable to activities described in subsection (e) performed at any location by the FSC or any person acting under a contract with such FSC.

(B) FOREIGN DIRECT COSTS.—The term "foreign direct costs" means, with respect to any transaction, the portion of the total direct costs which are attributable to activities performed outside the United States.

(4) RULES FOR COMMISSIONS, ETC.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (e) in the case of commissions, rentals, and furnishing of services.

(e) ACTIVITIES RELATING TO DISPOSITION OF EXPORT PROPERTY.—The activities referred to in subsection (d) are—

(1) advertising and sale promotion,

(2) the processing of customer orders and the arranging for delivery of the export property,

(3) transportation from the time of acquisition by the FSC (or, in the case of a commission relationship, from the beginning of such relationship for such transaction) to the delivery to the customer,

(4) the determination and transmittal of a final invoice or statement of account and the receipt of payment, and

(5) the assumption of credit risk.

(f) CERTAIN RECEIPTS NOT INCLUDED IN FOREIGN TRADING GROSS RECEIPTS.—

(1) CERTAIN RECEIPTS EXCLUDED ON BASIS OF USE; SUBSIDIZED RECEIPTS AND RECEIPTS FROM RELATED PARTIES EXCLUDED.—The term "foreign trading gross receipts" shall not include receipts of a FSC from a transaction if—

(A) the export property or services—

(i) are for ultimate use in the United States, or

(ii) are for use by the United States or any instrumentality thereof and such use of export property or services is required by law or regulation,

(B) such transaction is accomplished by a subsidy granted by the United States or any instrumentality thereof, or

(C) such receipts are from another FSC which is a member of the same controlled group of corporations of which such corporation is a member.

(2) INVESTMENT INCOME; CARRYING CHARGES.—The term "foreign trading gross receipts" shall not include any investment income or carrying charges.

SEC. 925. TRANSFER PRICING RULES.

(a) IN GENERAL.—In the case of a sale of export property to a FSC by a person described in section 482, the taxable income of such FSC and such person shall be based upon a transfer price which would allow such FSC to derive taxable income attributable to such sale (regardless of the sales price actually charged) in an amount which does not exceed the greatest of—

(1) 1.83 percent of the foreign trading gross receipts derived from the sale of such property by such FSC,

(2) 23 percent of the combined taxable income of such FSC and such person which is attributable to the foreign trading gross receipts derived from the sale of such property by such FSC, or

(3) taxable income based upon the sale price actually charged (but subject to the rules provided in section 482).

Paragraphs (1) and (2) shall apply only if the FSC meets the requirements of subsection (c) with respect to the sale.

(b) RULES FOR COMMISSIONS, RENTALS, AND MARGINAL COSTING.—The Secretary shall prescribe regulations setting forth—

(1) rules which are consistent with the rules set forth in subsection (a) for the application of this section in the case of commissions, rentals, and other income, and

(2) rules for the allocation of expenditures in computing combined taxable income under subsection (a)(2) in those cases where a FSC is seeking to establish or maintain a market for export property.

(c) REQUIREMENTS FOR USE OF ADMINISTRATIVE PRICING RULES.—A sale by a FSC meets the requirements of this subsection if—

(1) all of the activities described in section 924(e) attributable to such sale, and

(2) all of the activities relating to the solicitation (other than advertising), negotiation, and making of the contract for such sale,

have been performed by such FSC (or by another person acting under a contract with such FSC).

(d) LIMITATION ON GROSS RECEIPTS PRICING RULE.—The amount determined under subsection (a)(1) with respect to any transaction shall not exceed 2 times the amount which would be determined under subsection (a)(2) with respect to such transaction.

(e) TAXABLE INCOME.—For purposes of this section, the taxable income of a FSC shall be determined without regard to section 921.

(f) SPECIAL RULE FOR COOPERATIVES.—In any case in which a qualified cooperative sells export property to a FSC, in computing the combined taxable income of such FSC and such organization for purposes of subsection (a)(2), there shall not be taken into account any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

SEC. 926. DISTRIBUTIONS TO SHAREHOLDERS.

(a) DISTRIBUTIONS MADE FIRST OUT OF FOREIGN TRADE INCOME.—For purposes of this title, any distribution to a shareholder of a FSC by such FSC which is made out of earnings and profits shall be treated as made—

(1) first, out of earnings and profits attributable to foreign trade income, to the extent thereof, and

(2) then, out of any other earnings and profits.

(b) DISTRIBUTIONS BY FSC TO NONRESIDENT ALIENS AND FOREIGN CORPORATIONS TREATED AS UNITED STATES CONNECTED.—For purposes of this title, any distribution by a FSC which is made out of earnings and profits attributable to foreign trade income to any shareholder of such corporation which is a foreign corporation or a nonresident alien individual shall be treated as a distribution—

(1) which is effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States, and

(2) of income which is derived from sources within the United States.

(c) FSC INCLUDES FORMER FSC.—For purposes of this section the term "FSC" includes a former FSC.

SEC. 927. OTHER DEFINITIONS AND SPECIAL RULES.

(a) EXPORT PROPERTY.—For purposes of this subpart—

(1) IN GENERAL.—The term "export property" means property—

(A) manufactured, produced, grown, or extracted in the United States by a person other than a FSC,

(B) held primarily for sale, lease, or rental, in the ordinary course of trade or business, by, or to, a FSC, for direct use, consumption, or disposition outside the United States, and

(C) not more than 50 percent of the fair market value of which is attributable to articles imported into the United States.

For purposes of subparagraph (C), the fair market value of any article imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the

Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation.

(2) Excluded property.—The term "export property" shall not include—

(A) property leased or rented by a FSC for use by any member of a controlled group of corporations of which such FSC is a member,

(B) patents, inventions, models, designs, formulas, or processes whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, for commercial or home use), good will, trademarks, trade brands, franchises, or other like property,

(C) oil or gas (or any primary product thereof), or

(D) products the export of which is prohibited or curtailed to effectuate the policy set forth in paragraph (2)(C) of section 3 of the Export Administration Act of 1979 (relating to the protection of the domestic economy).

(3) Property in short supply.—If the President determines that the supply of any property described in paragraph (1) is insufficient to meet the requirements of the domestic economy, he may by Executive order designate the property as in short supply. Any property so designated shall not be treated as export property during the period beginning with the date specified in the Executive order and ending with the date specified in an Executive order setting forth the President's determination that the property is no longer in short supply.

(4) Qualified cooperative.—The term "qualified cooperative" means any organization to which part I of subchapter T applies which is engaged in the marketing of agricultural or horticultural products.

(b) Gross Receipts.—

(1) In general.—For purposes of this subpart, the term "gross receipts" means—

(A) the total receipts from the sale, lease, or rental of property held primarily for sale, lease, or rental in the ordinary course of trade or business, and

(B) gross income from all other sources.

(2) Gross receipts taken into account in case of commissions.—In the case of commissions on the sale, lease, or rental of property, the amount taken into account for purposes of this subpart as gross receipts shall be the gross receipts on the sale, lease, or rental of the property on which such commissions arose.

(c) Investment Income.—For purposes of this subpart, the term "investment income" means—

(1) dividends,

(2) interest,

(3) royalties,

(4) annuities,

(5) rents (other than rents from the lease or rental of export property for use by the lessee outside of the United States),

(6) gains from the sale or exchange of stock or securities,

(7) gains from futures transactions in any commodity on, or subject to the rules of, a board of trade or commodity exchange

(other than gains which arise out of bona fide hedging transaction reasonably necessary to conduct the business of the FSC in the manner in which such business is customarily conducted by other),

(8) amounts includible in computing the taxable income of the corporation under part I of subchapter J, and

(9) gains from the sale or other disposition of any interest in an estate or trust.

(d) OTHER DEFINITIONS.—For purposes of this subpart—

(1) CARRYING CHARGES.—The term "carrying charges" means—

(A) carrying charges, and

(B) under regulations prescribed by the Secretary, any amount in excess of the price for an immediate cash sale and any other unstated interest.

(2) TRANSACTION.—

(A) IN GENERAL.—The term "transaction" means—

(i) any sale, exchange or other disposition,

(ii) any lease or rental, and

(iii) any furnishing of services

(B) GROUPING OF TRANSACTIONS.—To the extent provided in regulations, any provision of this subpart which, but for this subparagraph, would be applied on a transaction-by-transaction basis may be applied by the taxpayer on the basis of groups of transactions based on product lines or recognized industry or trade usage. Such regulations may permit different groupings for different purposes.

(3) UNITED STATES DEFINED.—The term "United States" includes the Commonwealth of Puerto Rico.

(4) CONTROLLED GROUP OF CORPORATIONS.—The term "controlled group of corporations" has the meaning given to such term by section 1563(a), except that—

(A) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein, and

(B) section 1563(b) shall not apply.

(5) POSSESSIONS.—The term "possession of the United States" means Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States.

(6) SECTION 923(a)(2) NON-EXEMPT INCOME.—The term "section 923(a)(2) nonexempt income" means any foreign trade income from a transaction with respect to which paragraph (1) or (2) of section 925(a) does not apply and which is not exempt foreign trade income.

(e) SPECIAL RULES.—

(1) SOURCE RULES FOR RELATED PERSONS.—Under regulations, the income of a person described in section 482 from a transaction giving rise to foreign trading gross receipts of a FSC which is treated as from sources outside the United States shall not exceed the amount which would be treated as foreign source income earned by such person if the pricing rule under section 994 which corresponds to the rule used under section 925 with respect to such transaction applied to such transaction.

(2) PARTICIPATION IN INTERNATIONAL BOYCOTTS, ETC.—Under regulations prescribed by the Secretary, the exempt foreign trade income of a F for any taxable year shall be limited under rules similar to the rules of clauses (i) and (ii) of section 995(b)(1)(F).

(3) EXCHANGE OF INFORMATION REQUIREMENTS.—For purposes of this title, the term "FSC" shall not include any corporation which was created or organized under the laws of any foreign country unless, at the time such corporation was created or organized, there was in effect between such country and the United States—

(A) a bilateral or multilateral agreement described in section 274(h)(6)(C), or

(B) an income tax treaty with respect to which the Secretary certifies that the exchange of information program with such country under such treaty carries out the purposes of this paragraph.

(4) DISALLOWANCE OF TREATY BENEFITS.—Any corporation electing to be treated as a FSC under subsection (f)(1) may not claim any benefits under any income tax treaty between the United States and any foreign country.

(5) EXEMPTION FROM CERTAIN OTHER TAXES.—No tax shall be imposed by any jurisdiction described in subsection (d)(5) on any foreign trade income derived before January 1, 1987.

(f) ELECTION OF STATUS AS FSC (AND AS SMALL FSC).—

(1) ELECTION.—

(A) TIME FOR MAKING.—An election by a corporation under section 922(a)(2) to be treated as a FSC, and an election under section 922(b)(1) to be a small FSC, shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

(B) MANNER OF ELECTION.—An election under subparagraph (A) shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on the first day of the first taxable year for which such election is effective consent to such election.

(2) EFFECT OF ELECTION.—If a corporation makes an election under paragraph (1), then the provisions of this subpart shall apply to such corporation for the taxable year of the corporation for which made and for all succeeding taxable years.

(3) TERMINATION OF ELECTION.—

(A) REVOCATION.—An election under this subsection made by any corporation may be terminated by revocation of such election for any taxable year of the corporation after the first taxable year of the corporation for which the election is effective. A termination under this paragraph shall be effective with respect to such election—

(i) for the taxable year in which made, if made at any time during the first 90 days of such taxable year, or

(ii) for the taxable year following the taxable year in which made, if made after the close of such 90 days, and

for all succeeding taxable years of the corporation. Such termination shall be made in such manner as the Secretary shall prescribe by regulations.

(B) CONTINUED FAILURE TO BE A FSC.—If a corporation is not a FSC for each of any 5 consecutive taxable years of the corporation for which an election under this subsection is effective, the election to be a FSC shall be terminated and not be in effect for any taxable year of the corporation after such 5th year.

E. EXPORT TRADING COMPANIES

Export Trading Company Act of 1982, as amended

[15 U.S.C. 4001, 12 U.S.C. 1843, 15 U.S.C. 4011, 15 U.S.C. 6a, P.L. 97–290, as amended by P.L. 98–181]

TITLE I—GENERAL PROVISIONS

SHORT TITLE

SEC. 101. This title may be cited as the "Export Trading Company Act of 1982".

FINDINGS; DECLARATION OF PURPOSE

SEC. 102. (a) The Congress finds that—

(1) United States exports are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating one out of every seven dollars of total United States goods produced;

(2) the rapidly growing service-related industries are vital to the well-being of the United States economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 per centum of the Nation's gross national product, and offer the greatest potential for significantly increasing industrial trade involving finished products;

(3) trade deficits contribute to the decline of the dollar on international currency markets and have an inflationary impact on the United States economy;

(4) tens of thousands of small- and medium-sized United States businesses produce exportable goods or services but do not engage in exporting;

(5) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through export trading companies;

(6) export trade services in the United States are fragmented into a multitude of separate functions, and companies attempting to offer export trade services lack financial leverage to reach a significant number of potential United States exporters;

(7) the United States needs well-developed export trade intermediaries which can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(8) the development of export trading companies in the United States has been hampered by business attitudes and by Government regulations;

(9) those activities of State and local governmental authorities which initiate, facilitate, or expand exports of goods and services can be an important source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(10) if United States trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they should be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad; and

(11) the Department of Commerce is responsible for the development and promotion of United States exports, and especially for facilitating the export of finished products by United States manufacturers.

(b) It is the purpose of this Act to increase United States exports of products and services by encouraging more efficient provision of export trade services to United States producers and suppliers, in particular by establishing an office within the Department of Commerce to promote the formation of export trade associations and export trading companies, by permitting bank holding companies, bankers' banks, and Edge Act corporations and agreement corporations that are subsidiaries of bank holding companies to invest in export trading companies, by reducing restrictions on trade financing provided by financial institutions, and by modifying the application of the antitrust laws to certain export trade.

DEFINITIONS

SEC. 103. (a) For purposes of this title—

(1) the term "export trade" means trade or commerce in goods or services produced in the United States which are exported, or in the course of being exported, from the United States to any other country;

(2) the term "services" includes, but is not limited to, accounting, amusement, architectural, automatic data processing, business, communications, construction franchising and licensing, consulting, engineering, financial, insurance, legal, management, repair, tourism, training, and transportation services;

(3) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States;

(4) the term "export trading company" means a person, partnership, association, or similar organization, whether operated for profit or as a nonprofit organization, which does business under the laws of the United States or any State and which is organized and operated principally for purposes of—

(A) exporting goods or services produced in the United States; or

(B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(5) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(6) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(7) the term "antitrust laws" means the antitrust laws as defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section 5 applies to unfair methods of competition, and any State antitrust or unfair competition law.

(b) The Secretary of Commerce may by regulation further define any term defined in subsection (a), in order to carry out this title.

OFFICE OF EXPORT TRADE IN DEPARTMENT OF COMMERCE

SEC. 104. The Secretary of Commerce shall establish within the Department of Commerce an office to promote and encourage to the greatest extent feasible the formation of export trade associations and export trading companies. Such office shall provide information and advice to interested persons and shall provide a referral service to facilitate contact between producers of exportable goods and services and firms offering export trade services.

TITLE II—BANK EXPORT SERVICES

SHORT TITLE

SEC. 201. This title may be cited as the "Bank Export Services Act".

SEC. 202. The Congress hereby declares that it is the purpose of this title to provide for meaningful and effective participation by bank holding companies, bankers' banks, and Edge Act corporations, in the financing and development of export trading companies in the United States. In furtherance of such purpose, the Congress intends that, in implementing its authority under section 4(c)(14) of the Bank Holding Company Act of 1956, the Board of Governors of the Federal Reserve System should pursue regulatory policies that—

(1) provide for the establishment of export trading companies with powers sufficiently broad to enable them to compete with similar foreign-owned institutions in the United States and abroad;

(2) afford to United States commerce, industry, and agriculture, especially small- and medium-size firms, a means of exporting at all times;

(3) foster the participation by regional and smaller banks in the development of export trading companies; and

(4) facilitate the formation of joint venture export trading companies between bank holding companies and nonbank firms that provide for the efficient combination of complementary trade and financing services designed to create export trading companies that can handle all of an exporting company's needs.

INVESTMENTS IN EXPORT TRADING COMPANIES

SEC. 203. Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended—

(1) in paragraph (12)(B), by striking out "or" at the end thereof;

(2) in paragraph (13), by striking out the period at the end thereof and inserting in lieu thereof "; or"; and

(3) by inserting after paragraph (13) the following:

"(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

"(A)(i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up to another thirty days the period during which such disapproval may be issued.

"(ii) The period for disapproval may be extended for such additional thirty-day period only if the Board determines that a bank holding company proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

"(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

"(iv) The Board may disapprove any proposed investment only if—

"(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

"(II) the Board finds that such investment would affect the financial or managerial resources of a bank holding company to an extent which is likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company, or

"(III) the bank holding company fails to furnish the information required under clause (iii).

"(v) Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

"(vi) A proposed investment may be made prior to the expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

"(B)(i) The total amount of extensions of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such bank holding company, to an export trading company shall not exceed at any one time 10 per centum of the bank holding company's consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

"(ii) No provision of any other Federal law in effect on October 1, 1982, relating specifically to collateral requirements shall apply with respect to any such extension of credit.

"(iii) No bank holding company or subsidiary of such company which invests in an export trading company may extend credit to such export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

"(C) For purposes of this paragraph, an export trading company—

"(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that any bank holding company which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and

"(ii) may not engage in agricultural production activities or in manufacturing, except for such incidental product modification including repackaging, reassembling or extracting byproducts, as is necessary to enable United States goods or services to conform with requirements of a foreign country and to facilitate their sale in foreign countries.

"(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodity contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

"(E) Notwithstanding any other provision of law, an Edge Act corporation, organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611-631), which is a subsidiary of a bank holding company, or an agreement corporation, operating subject to section 25 of the Federal Reserve Act (12 U.S.C. 601-604(a)), which is a subsidiary of a bank holding company, may invest directly and indirectly in the aggregate up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of a corporation not engaged in banking) in the voting stock or other evidences of ownership in one or more export trading companies.

"(F) For purposes of this paragraph—

"(i) the term 'export trading company' means a company which does business under the laws of the United States or any State, which is exclusively engaged in activities related to international trade, and which is organized and operated principally for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services.

"(ii) the term 'export trade services' includes, but is not limited to, consulting, international market research, advertising, marketing, insurance (other than acting as principal, agent or broker in the sale of insurance on risks resident or located, or activities performed, in the United States, except for insurance covering the transportation of cargo from any point of origin in the United States to a point of final destination outside the United States), product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or service produced in the United States;

"(iii) the term 'bank holding company' shall include a bank which (I) is organized solely to do business with other banks and their officers, directors, or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank, owning stock in a bank described in this clause that invests in an export trading company, shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

"(iv) the term 'extension of credit' shall have the same meaning given such term in the fourth paragraph of section 23A of the Federal Reserve Act.".

SEC. 205. On or before two years after the date of the enactment of this Act, the Federal Reserve Board shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives the Board's recommendations with respect to the implementation of this section, the Board's recommendations on any changes in United States law to facilitate the financing of United States exports, especially by small, medium-size, and minority business concerns, and the Board's recommendations on the effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in the United States.

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

SEC. 206. The Export-Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other public or private creditors to export trading companies as defined in section 4(c)(14)(F)(i) of the Bank Holding Company Act of 1956, or to other exporters, when such loans are secured by export accounts receivable, inventories of exportable goods, accounts receivable from leases, performance contracts, grant commitments, participation fees, member dues, revenue from publications, or such other collateral as the Board of Directors may deem appropriate, and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size, and minority businesses or agricultural concerns. Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

BANKERS' ACCEPTANCES

SEC. 207. The seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 372) is amended to read as follows:

"(7)(A) Any member bank and any Federal or State branch or agency of a foreign bank subject to reserve requirements under section 7 of the International Banking Act of 1978 (hereinafter in this paragraph referred to as 'institutions'), may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace—

"(i) which grow out of transactions involving the importation or exportation of goods;

"(ii) which grow out of transactions involving the domestic shipment of goods; or

"(iii) which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.

"(B) Except as provided in subparagraph (C), no institution shall accept such bills, or be obligated for a participation share in such bills, in an amount equal at any time in the aggregate to more than 150 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(C) The Board, under such conditions as it may prescribe, may authorize, by regulation or order, any institution to accept such bills, or be obligated for a participation share in such bills, in an amount not exceeding at any time in the aggregate 200 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(D) Notwithstanding subparagraphs (B) and (C), with respect to any institution, the aggregate acceptances, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50 per centum of the aggregate of all acceptances, including obligations for a participation share in such acceptances, authorized for such institution under this paragraph.

"(E) No institution shall accept bills, or be obligated for a participation share in such bills, whether in a foreign or domestic transaction, for any one person, partnership, corporation, association or other entity in an amount equal at any time in the aggregate to more than 10 per centum of its paid up and unimpaired capital stock and surplus, or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H), unless the institution is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.

"(F) With respect to an institution which issues an acceptance, the limitations contained in this paragraph shall not apply to that portion of an acceptance which is issued by such institution and which is covered by a participation agreement sold to another institution.

"(G) In order to carry out the purposes of this paragraph, the Board may define any of the terms used in this paragraph, and, with respect to institutions which do not have capital or capital stock, the Board shall define an equivalent measure to which the limitations contained in this paragraph shall apply.

"(H) Any limitation or restriction in this paragraph based on paid-up and unimpaired capital stock and surplus of an institution shall be deemed to refer, with respect to a United States branch or agency of a foreign bank, to the dollar equivalent of the paid-up capital stock and surplus of the foreign bank, as determined by the Board, and if the foreign bank has more than one United States branch or agency, the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation or restriction."

TITLE III—EXPORT TRADE CERTIFICATES OF REVIEW

EXPORT TRADE PROMOTION DUTIES OF SECRETARY OF COMMERCE

SEC. 301. To promote and encourage export trade, the Secretary may issue certificates of review and advise and assist any person with respect to applying for certificates of review.

APPLICATION FOR ISSUANCE OF CERTIFICATE OF REVIEW

SEC. 302. (a) To apply for a certificate of review, a person shall submit to the Secretary a written application which—

(1) specifies conduct limited to export trade, and

(2) is in a form and contains any information, including information pertaining to the overall market in which the applicant operates, required by rule or regulation promulgated under section 310.

(b)(1) Within ten days after an application submitted under subsection (a) is received by the Secretary, the Secretary shall publish in the Federal Register a notice that announces that an application for a certificate of review has been submitted, identifies each person submitting the application, and describes the conduct for which the application is submitted.

(2) Not later than seven days after an application submitted under subsection (a) is received by the Secretary, the Secretary shall transmit to the Attorney General—

(A) a copy of the application.

(B) any information submitted to the Secretary in connection with the application, and

(C) any other relevent information (as determined by the Secretary) in the possession of the Secretary, including information regarding the market share of the applicant in the line of commerce to which the conduct specified in the application relates.

ISSUANCE OF CERTIFICATE

SEC. 303. (a) A certificate of review shall be issued to any applicant that establishes that its specified export trade, export trade activities, and methods of operation will—

(1) result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

(2) not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

(3) not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

(4) not include any act that may reasonably be expected to result in the sale for consumption or resale within the United

States of the goods, wares, merchandise, or services exported by the applicant.

(b) Within ninety days after the Secretary receives an application for a certificate of review, the Secretary shall determine whether the applicant's export trade, export trade activities, and methods of operation meet the standards of subsection (a). If the Secretary, with the concurrence of the Attorney General, determines that such standards are met, the Secretary shall issue to the applicant a certificate of review. The certificate of review shall specify—

(1) the export trade, export trade activities, and methods of operation to which the certification applies.

(2) the person to whom the certificate of review is issued, and

(3) any terms and conditions the Secretary or the Attorney General deems necessary to assure compliance with the standards of subsection (a).

(c) If the applicant indicates a special need for prompt disposition, the Secretary and the Attorney General may expedite action on the application, except that no certificate of review may be issued within thirty days of publication of notice in the Federal Register under section 302(b)(1).

(d)(1) If the Secretary denies in whole or in part an application for a certificate, he shall notify the applicant of his determination and the reasons for it.

(2) An applicant may, within thirty days of receipt of notification that the application has been denied in whole or in part, request the Secretary to reconsider the determination. The Secretary, with the concurrence of the Attorney General, shall notify the applicant of the determination upon reconsideration within thirty days of receipt of the request.

(e) If the Secretary denies an application for the issuance of a certificate of review and thereafter receives from the applicant a request for the return of documents submitted by the applicant in connection with the application for the certificate, the Secretary and the Attorney General shall return to the applicant, not later than thirty days after receipt of the request, the documents and all copies of the documents available to the Secretary and the Attorney General, except to the extent that the information contained in a document has been made available to the public.

(f) A certificate shall be void ab initio with respect to any export trade, export trade activities, or methods of operation for which a certificate was procured by fraud.

REPORTING REQUIREMENT; AMENDMENT OF CERTIFICATE; REVOCATION OF CERTIFICATE

SEC. 304. (a)(1) Any applicant who receives a certificate of review—

(A) shall promptly report to the Secretary any change relevant to the matters specified in the certificate, and

(B) may submit to the Secretary an application to amend the certificate to reflect the effect of the change on the conduct specified in the certificate.

(2) An application for an amendment to a certificate of review shall be treated as an application for the issuance of a certificate.

The effective date of an amendment shall be the date on which the application for the amendment is submitted to the Secretary.

(b)(1) If the Secretary or the Attorney General has reason to believe that the export trade, export trade activities, or methods of operation of a person holding a certificate of review no longer comply with the standards of section 303(a), the Secretary shall request such information from such person as the Secretary or the Attorney General deems necessary to resolve the matter of compliance. Failure to comply with such request shall be grounds for revocation of the certificate under paragraph (2).

(2) If the Secretary or the Attorney General determines that the export trade, export trade activities, or methods of operation of a person holding a certificate no longer comply with the standards of section 303(a), or that such person has failed to comply with a request made under paragraph (1), the Secretary shall give written notice of the determination to such person. The notice shall include a statement of the circumstances underlying, and the reasons in support of, the determination. In the 60-day period beginning 30 days after the notice is given, the Secretary shall revoke the certificate or modify it as the Secretary or the Attorney General deems necessary to cause the certificate to apply only to the export trade, export trade activities, or methods of operation which are in compliance with the standards of section 303(a).

(3) For purposes of carrying out this subsection, the Attorney General, and the Assistant Attorney General in charge of the antitrust division of the Department of Justice, may conduct investigations in the same manner as the Attorney General and the Assistant Attorney General conduct investigations under section 3 of the Antitrust Civil Process Act, except that no civil investigative demand may be issued to a person to whom a certificate of review is issued if such person is the target of such investigation.

JUDICIAL REVIEW; ADMISSIBILITY

SEC. 305. (a) If the Secretary grants or denies, in whole or in part, an application for a certificate of review or for an amendment to a certificate, or revokes or modifies a certificate pursuant to section 304(b), any person aggrieved by such determination may, within 30 days of the determination, bring an action in any appropriate district court of the United States to set aside the determination on the ground that such determination is erroneous.

(b) Except as provided in subsection (a), no action by the Secretary or the Attorney General pursuant to this title shall be subject to judicial review.

(c) If the Secretary denies, in whole or in part, an application for a certificate of review or for an amendment to a certificate, or revokes or amends a certificate, neither the negative determination nor the statement of reasons therefor shall be admissible in evidence, in any administrative or judicial proceeding, in support of any claim under the antitrust laws.

PROTECTION CONFERRED BY CERTIFICATE OF REVIEW

SEC. 306. (a) Except as provided in subsection (b), no criminal or civil action may be brought under the antitrust laws against a person to whom a certificate of review is issued which is based on conduct which is specified in, and complies with the terms of, a certificate issued under section 303 which certificate was in effect when the conduct occurred.

(b)(1) Any person who has been injured as a result of conduct engaged in under a certificate of review may bring a civil action for injunctive relief, actual damages, the loss of interest on actual damages and the cost of suit (including a reasonable attorney's fee) for the failure to comply with the standards of section 303(a). Any action commenced under this title shall proceed as if it were an action commenced under section 4 or section 16 of the Clayton Act, except that the standards of section 303(a) of this title and the remedies provided in this paragraph shall be the exclusive standards and remedies applicable to such action.

(2) Any action brought under paragraph (1) shall be filed within two years of the date the plaintiff has notice of the failure to comply with the standards of section 303(a) but in any event within four years after the cause of action accrues.

(3) In any action brought under paragraph (1), there shall be a presumption that conduct which is specified in and complies with a certificate of review does comply with the standards of section 303(a).

(4) In any action brought under paragraph (1), if the court finds that the conduct does comply with the standards of section 303(a), the court shall award to the person against whom the claim is brought the cost of suit attributable to defending against the claim (including a reasonable attorney's fee).

(5) The Attorney General may file suit pursuant to section 15 of the Clayton Act (15 U.S.C. 25) to enjoin conduct threatening clear and irreparable harm to the national interest.

GUIDELINES

SEC. 307. (a) To promote greater certainty regarding the application of the antitrust laws to export trade, the Secretary, with the concurrence of the Attorney General, may issue guidelines—

(1) describing specific types of conduct with respect to which the Secretary, with the concurrence of the Attorney General, has made or would make, determinations under sections 303 and 304, and

(2) summarizing the factual and legal bases in support of the determinations.

(b) Section 553 of title 5, United States Code, shall not apply to the issuance of guidelines under subsection (a).

ANNUAL REPORTS

SEC. 308. Every person to whom a certificate of review is issued shall submit to the Secretary an annual report, in such form and at such time as the Secretary may require, that updates where necessary the information required by section 302(a).

DISCLOSURE OF INFORMATION

SEC. 309. (a) Information submitted by any person in connection with the issuance, amendment, or revocation of a certificate of review shall be exempt from disclosure under section 552 of title 5, United States Code.

(b)(1) Except as provided in paragraph (2), no officer or employee of the United States shall disclose commercial or financial information submitted in connection with the issuance, amendment, or revocation of a certificate of review if the information is privileged or confidential and if disclosure of the information would cause harm to the person who submitted the information.

(2) Paragraph (1) shall not apply with respect to information disclosed—

(A) upon a request made by the Congress or any committee of the Congress,

(B) in a judicial or administrative proceeding, subject to appropriate protective orders,

(C) with the consent of the person who submitted the information,

(D) in the course of making a determination with respect to the issuance, amendment, or revocation of a certificate of review, if the Secretary deems disclosure of the information to be necessary in connection with making the determination,

(E) in accordance with any requirement imposed by a statute of the United States, or

(F) in accordance with any rule or regulation promulgated under section 310 permitting the disclosure of the information to an agency of the United States or of a State on the condition that the agency will disclose the information only under the circumstances specified in subparagraphs (A) through (E).

RULES AND REGULATIONS

SEC. 310. The Secretary, with the concurrence of the Attorney General, shall promulgate such rules and regulations as are necessary to carry out the purposes of this Act.

DEFINITIONS

SEC. 311. As used in this title—

(1) the term "export trade" means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported, from the United States or any territory thereof to any foreign nation,

(2) the term "service" means intangible economic output, including, but not limited to—

(A) business, repair, and amusement services,

(B) management, legal, engineering, architectural, and other professional services, and

(C) financial, insurance, transportation, informational and any other data-based services, and communication services,

(3) the term "export trade activities" means activities or agreements in the course of export trade,

(4) the term "methods of operation" means any method by which a person conducts or proposes to conduct export trade,

(5) the term "person" means an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between or among such persons,

(6) the term "antitrust laws" means the antitrust laws, as such term is defined in the first section of the Clayton Act (15 U.S.C. 12), and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) (to the extent that section 5 prohibits unfair methods of competition), and any State antitrust or unfair competition law,

(7) the term "Secretary" means the Secretary of Commerce or his designee, and

(8) the term "Attorney General" means the Attorney General of the United States or his designee.

EFFECTIVE DATES

Sec. 312. (a) Except as provided in subsection (b), this title shall take effect on the date of the enactment of this Act.

(b) Section 302 and section 303 shall take effect 90 days after the effective date of the rules and regulations first promulgated under section 310.

TITLE IV—FOREIGN TRADE ANTITRUST IMPROVEMENTS

SHORT TITLE

Sec. 401. This title may be cited as the "Foreign Trade Antitrust Improvements Act of 1982".

AMENDMENT TO SHERMAN ACT

Sec. 402. The Sherman Act (15 U.S.C. 1 et seq.) is amended by inserting after section 6 the following new section:

"Sec. 7. This Act shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless—

"(1) such conduct has a direct, substantial, and reasonably foreseeable effect—

"(A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or

"(B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and

"(2) such effect gives rise to a claim under the provisions of this Act, other than this section.

If this Act applies to such conduct only because of the operation of paragraph (1)(B), then this Act shall apply to such conduct only for injury to export business in the United States.".

AMENDMENT TO FEDERAL TRADE COMMISSION ACT

SEC. 403. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by adding at the end thereof the following new paragraph:

"(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—

"(A) such methods of competition have a direct, substantial, and reasonably foreseeable effect—

"(i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or

"(ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and

"(B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph.

If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States.".

F. EXPORT FINANCING

1. Export-Import Bank of the United States

[12 U.S.C. 635, P.L. 79-173, as amended by P.L. 79-282, P.L. 80-89, P.L. 81-158, P.L. 83-30, P.L. 83-570, P.L. 83-779, P.L. 88-55, P.L. 85-424, P.L. 87-311, P.L. 88-101, P.L. 89-348, P.L. 89-438, P.L. 90-267, P.L. 92-126, P.L. 93-331, P.L. 93-374, P.L. 93-425, P.L. 93-450, P.L. 93-646, P.L. 95-143, P.L. 95-407, P.L. 95-630, P.L. 96-470, P.L. 97-35, P.L. 98-109, P.L. 98-143, P.L. 98-181, P.L. 99-440, P.L. 99-472, and P.L. 99-509]

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SUBCHAPTER II—EXPORT FINANCING

[PUBLIC LAW 90-390]

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[Trade and Development Enhancement Act of 1983, P.L. 98-181, Title VI, Part C]

635*o*. Congressional statement of purpose.
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635s. Implementation.
635t. Definitions.

Subchapter I—General Provisions

[Export-Import Bank Act of 1945, as amended]

SEC. 635. POWERS AND FUNCTIONS OF BANK.

(a) General banking business; use of mails; publication of documents, reports, contracts, etc.; use of assets and allocated or borrowed money; payment of dividends; medium-term financing; dissemination of information

(1) There is created a corporation with the name Export-Import Bank of the United States, which shall be an agency of the United States of America. The objects and purposes of the Bank shall be to

aid in financing and to facilitate exports and imports and the exchange of commodities and services between the United States or any of its Territories or insular possessions and any foreign country or the agencies or nationals thereof. In connection with and in furtherance of its objects and purposes, the Bank is authorized and empowered to do a general banking business except that of circulation; to receive deposits; to purchase, discount, rediscount, sell, and negotiate, with or without its endorsement or guaranty, and to guarantee notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to guarantee, insure, coinsure, and reinsure against political and credit risks of loss; to purchase, sell, and guarantee securities but not to purchase with its funds any stock in any other corporation except that it may acquire any such stock through the enforcement of any lien or pledge or otherwise to satisfy a previously contracted indebtedness to it; to accept bills and drafts drawn upon it; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to perform any act herein authorized in participation with any other person, including any individual, partnership, corporation, or association; to adopt, alter, and use a corporate seal, which shall be judicially noticed; to sue and to be sued, to complain and to defend in any court of competent jurisdiction; to represent itself or to contract for representation in all legal and arbitral proceedings outside the United States; and the enumeration of the foregoing powers shall not be deemed to exclude other powers necessary to the achievement of the objects and purposes of the Bank. The Bank shall be entitled to the use of the United States mails in the same manner and upon the same conditions as the executive departments of the Government. The Bank is authorized to publish or arrange for the publication of any documents, reports, contracts, or other material necessary in connection with or in furtherance of its objects and purposes without regard to the provisions of section 501 of Title 44 whenever the Bank determines that publication in accordance with the provisions of such section would not be practicable. The Bank may impose and collect reasonable fees to cover the costs of conferences and seminars sponsored by, and publications provided by, the Bank. Amounts received under the preceding sentence shall be credited to the fund which initially paid for such activities. The Bank is authorized to use all of its assets and all moneys which have been or may hereafter be allocated to or borrowed by it in the exercise of its functions. Net earnings of the Bank after reasonable provision for possible losses shall be used for payment of dividends on capital stock. Any such dividends shall be deposited into the Treasury as miscellaneous receipts.

(2) In order for the Bank to be competitive in all of its financing programs with countries whose exports compete with United States exports, the Bank shall establish a program that—

(A) provides medium-term financing where necessary to be fully competitive—

(i) at rates of interest to the customer which are equal to rates established in international agreements; and

(ii) in amounts up to 85 percent of the total cost of the exports involved; and

(B) enables the Bank to cooperate fully with the Secretary of Commerce and the Administrator of the Small Business Administration to develop a program for purposes of disseminating information (using existing private institutions) to small business concerns regarding the medium-term financing provided under this paragraph.

(3) ENHANCEMENT OF MEDIUM-TERM PROGRAM.—

(A) IN GENERAL.—To enhance the medium-term financing program established pursuant to paragraph (2), the Bank shall establish measures to—

(i) improve the competitiveness of the Bank's medium-term financing and ensure that its medium-term financing is fully competitive with that of other major official export credit agencies;

(ii) ease the administrative burdens and procedural and documentary requirements imposed on the users of medium-term financing;

(iii) attract the widest possible participation of private financial institutions and other sources of private capital in the medium-term financing of United States exports; and

(iv) render the Bank's medium-term financing as supportive of United States exports as is its Direct Loan Program.

(B) REPORT REQUIRED.—Not later than April 15, 1988, the Bank shall transmit a report to the Congress analyzing the measures adopted to enhance medium-term financing.

(b) Guarantees, insurance and extension of credit functions; competitive with Government-supported rates and terms and conditions for foreign exporting countries; survey and report; interest rates; private capital encouragement; national interest determinations; delivery of United States services in international commerce; small business concern encouragement; coverage of losses by Foreign Credit Insurance Association; loans to Union of Soviet Socialist Republics for fossil fuel research, etc.; nuclear safeguards violations resulting in limitations on exports and credit; defense article credit sales to less developed countries; amount outstanding; supplementation of Commodity Credit Corporation programs; prohibitions respecting Republic of South Africa; limitations on authority of Bank

(1)(A) It is the policy of the United States to foster expansion of exports of manufactured goods, agricultural products, and other goods and services, thereby contributing to the promotion and maintenance of high levels of employment and real income and to the increased development of the productive resources of the United States. To meet this objective in all its programs, the Export-Import Bank is directed, in the exercise of its functions, to provide guarantees, insurance, and extensions of credit at rates and on terms and other conditions which are fully competitive with the Government-supported rates and terms and other conditions available for the financing of exports of goods and services from the principal countries whose exporters compete with United

States exporters. The Bank shall, in cooperation with the export financing instrumentalities of other governments, seek to minimize competition in government-supported export financing and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce government subsidized export financing. The Bank shall, on an annual basis, report to the appropriate committees of Congress its actions in complying with these directives. In this report the Bank shall include a survey of all other major export-financing facilities available from other governments and government-related agencies through which foreign exporters compete with the United States exporters and indicate in specific terms the ways in which the Bank's rates, terms, and other conditions compare with those offered from such other governments directly or indirectly. Further, the Bank shall at the same time survey a representative number of United States exporters and United States commercial lending institutions which provide export credit to determine their experience in meeting financial competition from other countries whose exporters compete with United States exporters. The results of this survey shall be included as part of the annual report required by this subparagraph. The Bank shall also include in the annual report a description of each loan by the Bank involving the export of any product or service related to the production, refining or transportation of any type of energy or the development of any energy resource with a statement assessing the impact, if any, on the availability of such products, services, or energy supplies thus developed for use within the United States.

(B) It is further the policy of the United States that loans made by the Bank in all its programs shall bear interest at rates determined by the Board of Directors, consistent with the Bank's mandate to support United States exports at rates and on terms and conditions which are fully competitive with exports of other countries, and consistent with international agreements. For the purpose of the preceding sentence, rates and terms and conditions need not be identical in all respects to those offered by foreign countries, but should be established so that the effect of such rates, terms, and conditions for all the Bank's programs, including those for small businesses and for medium-term financing, will be to neutralize the effect of such foreign credit on international sales competition. The Bank shall consider its average cost of money as one factor in its determination of interest rates, where such consideration does not impair the Bank's primary function of expanding United States exports through fully competitive financing. The Bank may not impose a credit application fee unless (i) the fee is competitive with the average fee charged by the Bank's primary foreign competitors, and (ii) the borrower or the exporter is given the option of paying the fee at the outset of the loan or over the life of the loan and the present value of the fee determined under either such option is the same amount. It is also the policy of the United States that the Bank in the exercise of its functions should supplement and encourage, and not compete with, private capital; that the Bank shall accord equal opportunity to export agents and managers, independent export firms export trading companies, and small commercial banks in the formulation and implementation of its programs; that the Bank shall give due recognition to the policy stated in section 631(a) of Title 15 that "the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise" and that in furtherance of this policy the Board of Directors shall designate an officer of the Bank who shall be responsible to the President of the Bank for all matters concerning or affecting small business concerns and who, among other duties, shall be responsible for advising small businessmen of the opportunitities for small business concerns in the functions of the Bank and for maintaining liaison with the Small Business Administration and other departments and agencies in matters affecting small business concerns; that the Bank should give emphasis to assisting new and small business entrants in the agricultural export market, and shall, in cooperation with other relevant Government agencies, including the Commodity Credit Corporation, develop a program of education to increase awareness of export opportunities among small agribusinesses and cooperatives; that loans, so far as possible consistent with the carrying out of the purposes of subsection (a) of this section, shall generally be for specific purposes, and, in the judgment of the Board of Directors, offer reasonable assurance of repayment; and that in authorizing any loan or guarantee, the Board of Directors shall take into account any serious adverse effect of such loan or guarantee on the competitive position of United States industry, the availability of materials which are in short supply in the United States, and employment in the United States, and shall give particular emphasis to the objective of strengthening the competitive position of United States exporters and thereby of expanding total United States exports. Only in cases where the President determines that such action would be in the national interest where such action would clearly and importantly advance United States policy in such areas as international terrorism, nuclear proliferation, environmental protection and human rights, should the Export-Import Bank deny applications for credit for nonfinancial or noncommercial considerations.

(C) Consistent with the policy of section 3261 of Title 22 and section 2151q of Title 22, the Board of Directors shall name an officer of the Bank whose duties shall include advising the President of the Bank on ways of promoting the export of goods and services to be used in the development, production, and distribution of nonnuclear renewable energy resources, disseminating information concerning export opportunities and the availability of Bank support for such activities, and acting as a liaison between the Bank and the Department of Commerce and other appropriate departments and agencies.

(D)(i) It is further the policy of the United States to foster the delivery of United States services in international commerce. In exercising its powers and functions, the Bank shall give full and equal consideration to making loans and providing guarantees for the export of services (independently, or in conjunction with the export of manufactured goods, equipment, hardware or other capital goods) consistent with the Bank's policy to neutralize foreign subsidized credit competition and to supplement the private capital market.

(ii) The Bank shall include in its annual report a summary of its programs regarding the export of services.

(E)(i)(I) It is further the policy of the United States to encourage the participation of small business in international commerce.

(II) In exercising its authority, the Bank shall develop a program which gives fair consideration to making loans and providing guarantees for the export of goods and services by small businesses.

(ii) It is further the policy of the United States that the Bank shall give due recognition to the policy stated in section 631(a) of Title 15 that "the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise".

(iii) In furtherance of this policy, the Board of Directors shall designate an officer of the Bank who—

(I) shall be responsible to the President of the Bank for all matters concerning or affecting small business concerns; and

(II) among other duties, shall be responsible for advising small business concerns of the opportunities for small business concerns in the functions of the Bank and for maintaining liaison with the Small Business Administration and other departments and agencies in matters affecting small business concerns.

(iv) The Director appointed to represent the interests of small business under section 635a(c) of this title shall ensure that the Bank carries out its responsibilities under clauses (ii) and (iii) of this subparagraph and that the Bank's financial and other resources are, to the maximum extent possible, appropriately used for small business needs.

(v) To assure that the purposes of clauses (i) and (ii) of this subparagraph are carried out, the Bank shall make available, from the aggregate loan, guarantee, and insurance authority available to it, an amount to finance exports by small business concerns (as defined under section 632 of Title 15) which shall be not less than—

(I) 6 per centum of such authority for fiscal year 1984;

(II) 8 per centum of such authority for fiscal year 1985; and

(III) 10 per centum of such authority for fiscal year 1986 and thereafter.

(vi) The Bank shall utilize the amount set aside pursuant to clause (v) of this subparagraph to offer financing for small business exports on terms which are fully competitive with regard to interest rates and with regard to the portion of financing which may be provided, guaranteed, or insured. Financing under this clause (vi) shall be available without regard to whether financing for the particular transaction was disapproved by any other Federal agency.

(vii)(I) The Bank shall utilize a part of the amount set aside pursuant to clause (v) to provide lines of credit or guarantees to consortia of small or medium size banks, export trading companies, State export finance agencies, export financing cooperatives, small business investment companies (as defined in section 662 of Title 15), or other financing institutions or entities in order to finance small business exports.

(II) Financing under this clause (vii) shall be made available only where the consortia or the participating institutions agree to undertake processing, servicing, and credit evaluation functions in connection with such financing.

(III) To the maximum extent practicable, the Bank shall delegate to the consortia the authority to approve financing under this clause (vii).

(IV) In the administration of the program under this clause (vii), the Bank shall provide appropriate technical assistance to participating consortia and may require such consortia periodically to furnish information to the Bank regarding the number and amount of loans made and the creditworthiness of the borrowers.

(viii) In order to assure that the policy stated in clause (i) is carried out, the Bank shall promote small business exports and its small business export financing programs in cooperation with the Secretary of Commerce, the Office of International Trade of the Small Business Administration, and the private sector, particularly small business organizations, State agencies, chambers of commerce, banking organizations, export management companies, export trading companies, and private industry.

(ix) The Bank shall provide, through creditworthy trade associations, export trading companies, State export finance companies, export finance cooperatives, and other multiple-exporter organizations, medium-term risk protection coverage for the members and clients of such organizations. Such coverage shall be made available to each such organization under a single risk protection policy covering its members or clients. Nothing in this provision shall be interpreted as limiting the Bank's authority to deny support for specific transactions or to disapprove a request by such an organization to participate in such coverage.

(F) Consistent with international agreements, the Bank shall urge the Foreign Credit Insurance Association to provide coverage against 100 per centum of any loss with respect to exports having a value of less than $100,000.

(G) Participation in or access to long-, medium-, and short-term financing, guarantees, and insurance provided by the Bank shall not be denied solely because the entity seeking participation or access is not a bank or is not a United States person.

(2) PROHIBITION ON AID TO MARXIST-LENINIST COUNTRIES.—

(A) IN GENERAL.—The Bank in the exercise of its functions shall not guarantee, insure, extend credit, or participate in the extension of credit—

(i) in connection with the purchase or lease of any product by a Marxist-Leninist country, or agency or national thereof; or

(ii) in connection with the purchase or lease of any product by any other foreign country, or agency or national thereof, if the product to be purchased or leased by such other country, agency, or national is, to the knowledge of the Bank, principally for use in, or sale or lease to, a Marxist-Leninist country.

(B) MARXIST-LENINIST COUNTRY DEFINED.—

(i) IN GENERAL.—For the purposes of this paragraph, the term "Marxist-Leninist country" means any country which—

(I) maintains a centrally planned economy based on the principles of Marxist-Leninism, or

(II) is economically and militarily dependent on the Union of Soviet Socialist Republics or on any other Marxist-Leninist country.

(ii) SPECIFIC COUNTRIES DEEMED TO BE MARXIST-LENINIST.—Unless otherwise determined by the President in the manner provided in subparagraph (C), the following countries are deemed to be Marxist-Leninist countries for purposes of this paragraph:

Cambodian People's Republic.
Cooperative Republic of Guyana.
Czechoslovak Socialist Republic.
Democratic People's Republic of Korea.
Democratic Republic of Afghanistan.
Estonia.
German Democratic Republic.
Hungarian People's Republic.
Lao People's Democratic Republic.
Latvia.
Lithuania.
Mongolian People's Republic.
People's Democratic Republic of Yemen.
People's Republic of Albania.
People's Republic of Angola.
People's Republic of Benin.
People's Republic of Bulgaria.
People's Republic of China.
People's Republic of the Congo.
People's Republic of Mozambique.
Polish People's Republic.
Republic of Cuba.
Republic of Nicaragua.
Socialist Ethiopia.
Socialist Federal Republic of Yugoslavia.
Socialist Republic of Romania.
Socialist Republic of Vietnam.
Surinam.
Tibet.
Union of Soviet Socialist Republics (including its captive constituent republics).

(C) PRESIDENTIAL DETERMINATION THAT A COUNTRY HAS CEASED TO BE MARXIST-LENINIST.—If the President determines that any country on the list contained in subparagraph (B)(ii) has ceased to be a Marxist-Leninist country (within the definition of such term in subparagraph (B)(i)), such country shall not be treated as a Marxist-Leninist country for purposes of this paragraph after the date of such determination, unless the President subsequently determines that such country has again become a Marxist-Leninist country.

(D) PRESIDENTIAL DETERMINATION RELATING TO FINANCING IN THE NATIONAL INTEREST.—

(i) IN GENERAL.—Subparagraph (A) shall not apply to guarantees, insurance, or extensions of credit by the Bank to a country, agency, or national described in clause (i) or (ii) of subparagraph (A) (in connection with transactions described in such clauses) if the President determines that such guarantees, insurance, or extensions of credit are in the national interest.

(ii) SEPARATE DETERMINATION FOR CERTAIN TRANSACTIONS.—The President shall make a separate determination under clause (i) for each transaction described in clause (i) or (ii) of subparagraph (A) for which the Bank would extend a loan in an amount equal to or greater than $50,000,000.

(iii) REPORT OF CLAUSE (i) DETERMINATIONS TO CONGRESS.—Any determination by the President under clause (i) shall be reported to the Congress not later than the earlier of—

(I) the end of the 30-day period beginning on the date of such determination; or

(II) the date the Bank takes final action with respect to the first transaction involving the country, agency, or national for which such determination is made after the date of the enactment of the Export-Import Bank Amendments of 1974, unless a report of a determination with respect to such country, agency, or national was made and reported before such date of enactment.

(iv) REPORT OF CLAUSE (ii) DETERMINATIONS TO CONGRESS.—Any determination by the President under clause (ii) shall be reported to the Congress not later than the earlier of—

(I) the end of the 30-day period beginning on the date of such determination; or

(II) the date the Bank takes final action with respect to the transaction for which such determination is made.

(3) Except as provided by the fourth sentence of this paragraph, no loan or financial guarantee or general guarantee or insurance facility or combination thereof (i) in an amount which equals or exceeds $100,000,000, (ii) in an amount which equals or exceeds $25,000,000 for the export of goods or services involving research, exploration, or production of fossil fuel energy resources in the Union of Soviet Socialist Republics, or (iii) for the report of technology, fuel, equipment, materials, or goods or services to be used in the construction, alteration, operation, or maintenance of nuclear power, enrichment, reprocessing, research, or heavy water production facilities, shall be finally approved by the Board of Directors of the Bank, unless in each case the Bank has submitted to the Congress with respect to such loan, financial guarantee, or combination thereof, a detailed statement describing and explaining the transaction, at least 25 days of continuous session of the Congress prior to the date of final approval. For the purpose of the preceding sentence, continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 25 day period referred to in such sentence. Such statement shall contain—

(A) in the case of a loan or financial guarantee—

(i) a brief description of the purposes of the transaction;

(ii) the identity of the party or parties requesting the loan or financial guarantee;

(iii) the nature of the goods or services to be exported and the use for which the goods or services are to be exported; and

(iv) in the case of a general guarantee or insurance facility—

(I) a description of the nature and purpose of the facility;

(II) the total amount of guarantees or insurance; and

(III) the reasons for the facility and its methods of operation; and

(B) a full explanation of the reasons for Bank financing of the transaction, the amount of the loan to be provided by the Bank, the approximate rate and repayment terms at which such loan will be made available and the approximate amount of the financial guarantee.

If the Bank submits a statement to the Congress under this paragraph and either House of Congress is in an adjournment for a period which continues for at least ten days after the date of submission of the statement, then any such loan or guarantee or combination thereof may, subject to the second sentence of this paragraph, be finally approved by the Board of Directors upon the termination of the twenty-five-day period referred to in the first sentence of this paragraph or upon the termination of a thirty-five-calendar-day period (which commences upon the date of submission of the statement), whichever occurs sooner.

(4) The Secretary of State shall report to the appropriate committees of Congress and to the Board of Directors of the Export-Import Bank if the Secretary determines that any country that has agreed to International Atomic Energy Agency nuclear safeguards materially violates, abrogates, or terminates, after October 26, 1977, such safeguards or that any country that has entered into an agreement for cooperation concerning the civil use of nuclear energy with the United States materially violates, abrogates, or terminates, after October 26, 1977, any guarantee or other undertaking to the United States made in such agreement or that any country that is not a nuclear-weapons state (as defined in article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons) detonates, after October 26, 1977, a nuclear explosive device. The Secretary shall specify which country or countries the Secretary has determined to have so acted, and the Board shall not give approval to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to such country unless the President determines that it is in the national interest for the Bank to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to such country and such determination has been reported to the Congress not less than twenty-five days of continuous session of the Congress prior to the date of such approval. For the purpose of the preceding sentence, continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the twenty-five day period referred to in such sentence.

(5) The Bank shall not guarantee, insure, or extend credit, or participate in the extension of credit in connection with (A) the purchase of any product, technical data, or other information by a national or agency of any nation which engages in armed conflict, declared or otherwise, with the Armed Forces of the United States, (B) the purchase by any nation (or national or agency thereof) of any product, technical data, or other information which is to be used principally by or in any such nation described in clause (A) or (C) the purchase of any liquid metal fast breeder nuclear reactor or any nuclear fuel reprocessing facility. The Bank shall not guarantee, insure, or extend credit, or participate in the extension of credit in connection with the purchase of any product, technical data, or other information by a national or agency of any nation if the President determines that any such transaction would be contrary to the national interest.

(6) The Bank shall not guarantee, insure, or extend credit, or participate in an extension of credit in connection with any credit sale of defense articles and defense services to any country designated under section 4916 of Title 26 as an economically less developed country for purposes of the tax imposed by section 4911 of Title 26. The prohibitions set forth in this paragraph shall not apply with respect to any transaction the consummation of which the President determines would be in the national interest and reports such determination (within thirty days after making the same) to the Senate and House of Representatives. In making any such determination the President shall take into account, among other considerations, the national interest in avoiding arms races among countries not directly menaced by the Soviet Union or by Communist China; in avoiding arming military dictators who are denying social progress to their own peoples; and in avoiding expenditures by developing countries of scarce foreign exchange needed for peaceful economic progress.

(7) In no event shall the Bank have outstanding at any time in excess of 7½ per centum of the limitation imposed by section 635e of this title for such guarantees, insurance, credits or participation in credits with respect to exports of defense articles and services to countries which, in the judgment of the Board of Directors of the Bank, are less developed.

(8) The Bank shall supplement but not compete with private capital and the programs of the Commodity Credit Corporation to ensure that adequate financing will be made available to assist the export of agricultural commodities, except that, consistent with paragraph (1)(A) of this subsection, the Bank in assisting any such export transactions shall, in cooperation with the export financing instrumentalities of other governments, seek to minimize competition in Government-supported export financing, and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce Government subsidized export financing. In order to carry out the purposes of this subsection, the Bank shall consult with the Secretary of Agriculture and where the Secretary of Agriculture has recommended against Bank financing of the export of a particular agricultural commodity, shall take such recommendation into consideration in determining whether to provide credit or other assistance for any

export sale of such commodity, and shall consider the importance of agricultural commodity exports to the United States export market and the nation's balance of trade in deciding whether or not to provide assistance under this subsection. The Bank shall include in the report to Congress under section 635g(a) of this title a description of the measures undertaken by it pursuant to this subsection.

(9) (A) Except as provided in subparagraph (B), in no event shall the Bank guarantee, insure, or extend credit or participate in the extension of credit (a) in support of any export which would contribute to enabling the Government of the Republic of South Africa to maintain or enforce apartheid; (b) in support of any export to the Government of the Republic of South Africa or its agencies unless the President determines that significant progress toward the elimination of apartheid has been made and transmits to the Congress a statement describing and explaining that determination; or (c) in support of any export to other purchasers in the Republic of South Africa unless the United States Secretary of State certifies that the purchaser has endorsed and has proceeded toward the implementation of the following principles: nonsegregation of the races in all work facilities; equal and fair employment for all employees; equal pay for equal work for all employees; initiation and development of training programs to prepare nonwhite South Africans for supervisory, administrative, clerical, and technical jobs; increasing the number of nonwhites in management and supervisory positions; a willingness to engage in collective bargaining with labor unions; and improving the quality of life for employees in such areas as housing, transportation, schooling, recreation, and health facilities.

(B) The Bank shall take active steps to encourage the use of its facilities to guarantee, insure, extend credit, or participate in the extension of credit to business enterprises in South Africa that are majority owned by South African blacks or other nonwhite South Africans. The certification requirement contained in clause (c) of subparagraph (A) shall not apply to exports to or purchases from business enterprises which are majority owned by South African blacks or other nonwhite South Africans.

(10)(A) The Bank shall not, without a specific authorization by law, guarantee, insure, or extend credit (or participate in the extension of credit) to—

(i) assist specific countries with balance of payments financing; or

(ii) assist (as the primary purpose of any such guarantee, insurance, or credit) any country in the management of its international indebtedness, other than its outstanding obligations to the Bank.

(B) Nothing contained in subparagraph (A) shall preclude guarantees, insurance, or credit the primary purpose of which is to support United States exports.

(11) Prohibition Relating to Angola.—Notwithstanding any determination by the President under paragraph (2), the Bank may not guarantee, insure, or extend credit (or participate in the extension of credit) in connection with any export of goods or services, except food or agricultural commodities, to the People's Republic of

Angola until the President certifies to the Congress that no combatant forces or military advisors of the Republic of Cuba or of any other Marxist-Leninist country (as such term is defined in paragraph (2)(B)) remain in Angola.

(c) Guarantees, insurance, coinsurance, and reinsurance functions; fractional charge; aggregate outstanding amount; fees and premiums; issuance, service and adjustments by agents

(1) The Bank is authorized and empowered to charge against the limitations imposed by section 635e of this title, not less than 25 per centum of the related contractual liability which the Bank incurs for guarantees, insurance, coinsurance, and reinsurance against political and credit risks of loss. The aggregate amount of guarantees, insurance, coinsurance, and reinsurance which may be charged on this fractional basis pursuant to this section shall not exceed $25,000,000,000 outstanding at any one time. Fees and premiums shall be charged in connection with such contracts commensurate, in the judgment of the Bank, with risks covered.

(2) The Bank may issue such guarantees, insurance, coinsurance, and reinsurance to or with exporters, insurance companies, financial institutions, or others, or groups thereof, and where appropriate may employ any of the same to act as its agent in the issuance and servicing of such guarantees, insurance, coinsurance, and reinsurance, and the adjustment of claims arising thereunder.

(3) TRANSFERABILITY OF GUARANTEES.—With respect to medium-term and long-term obligations insured or guaranteed by the Bank after the date of the enactment of the Export-Import Bank Act Amendments of 1986, the Bank shall authorize the unrestricted transfer of such obligations by the originating lenders or their transferees to other lenders without affecting, limiting, or terminating the guarantee or insurance provided by the Bank.

(d) Equal and nondiscriminatory opportunities for domestic companies to bid for insurance

(1) In carrying out its responsibilities under this chapter, the Bank shall work to ensure that United States companies are afforded an equal and nondiscriminatory opportunity to bid for insurance in connection with transactions assisted by the Bank.

(2) In furtherance of such effort, the Chairman of the Bank shall review Bank policies and programs in regard to this issue, and in coordination with the United States Trade Representative and the appropriate agencies of the Department of State, the Department of the Treasury, and the Department of Commerce, undertake actions designed to promote equal and nondiscriminatory opportunities to bid for insurance in connection with all aspects of international trade activities.

(3) The Bank shall report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than May 15, 1984, regarding—

(A) the existing obstacles to equal and nondiscriminatory bidding for insurance related to transactions assisted by the Bank;

(B) the efforts that the Bank has taken in addressing such problems; and

(C) recommendations for such legislative or administrative actions as the Bank considers necessary.

(e) Limitation on assistance which adversely affect the United States

(1) In General.—The Bank may not extend any direct credit or financial guarantee for establishing or expanding production of any commodity for export by any country other than the United States, if—

(A) the Bank determines that—

(i) the commodity is likely to be in surplus on world markets at the time the resulting productive capacity is expected to become operative; or

(ii) the resulting production capacity is expected to compete with United States production of the same, similar, or competing commodity; and

(B) the Bank determines that the extension of such credit or guarantee will cause substantial injury to United States producers of the same, similar, or competing commodity.

(2) Exception.—Paragraph (1) shall not apply in any case where, in the judgment of the Board of Directors of the Bank, the short- and long-term benefits to industry and employment in the United States are likely to outweigh the injury to United States producers of the same, similar, or competing commodity.

(f) Interest subsidy payments

(1) Payments Authorized.—The Bank may enter into commitments to make payments to commercial lending institutions and other lenders, in such amounts as the Bank may determine to be appropriate, to provide a sufficient return on loans by such lenders (including loans guaranteed by the Bank) in support of United States exports (of goods or services) when financing at less than market rates is required for such exports in order to respond to subsidized financing offered by foreign export credit agencies.

(2) Authority to Make Payments Subject to Minimum Amount of Direct Loan Authority.—The authority to enter into commitments to make interest subsidy payments under paragraph (1) shall be effective for any fiscal year only if the aggregate principal amount of direct loans the Bank may obligate in such fiscal year is equal to or greater than $700,000,000.

(3) Payments Allowed Only From Funds Appropriated for Such Purpose.—The estimated aggregate amount of commitments entered into by the Bank under paragraph (1) in any fiscal year beginning after fiscal year 1986 may not exceed the amount of funds appropriated to the Bank for such purposes for such fiscal year.

(4) Authorization of Appropriations.—

(A) In general.—Subject to subparagraph (B), there are authorized to be appropriated to the Bank, for any fiscal year beginning after fiscal year 1986, such sums as may be necessary to carry out the purposes of this subsection.

(B) Budget scoring.—No amount is authorized to be appropriated for commitments to make interest subsidy payments on loans for which the Bank extends a loan guarantee commitment if any amount of such loan guarantee commitment is scored as budget authority in any estimate of budget authority prepared pursuant to any provision of the Congressional Budget and Impoundment Control Act of 1974.

(5) SUNSET PROVISION.—The authority to enter into commitments to make interest subsidy payments shall lapse on October 1, 1988.

SEC. 635a. MANAGEMENT OF BANK.

(a) Establishment as independent agency

The Export-Import Bank of the United States shall constitute an independent agency of the United States and neither the Bank nor any of its functions, powers, or duties shall be transferred to or consolidated with any other department, agency, or corporation of the Government unless the Congress shall otherwise by law provide.

(b) President and First Vice President of the Bank; appointment; duties

There shall be a President of the Export-Import Bank of the United States, who shall be appointed by the President of the United States by and with the advice and consent of the Senate, and who shall serve as chief executive officer of the Bank. There shall be a First Vice President of the Bank, who shall be appointed by the President of the United States by and with the advice and consent of the Senate, who shall serve as President of the Bank during the absence or disability of or in the event of a vacancy in the office of President of the Bank, and who shall at other times perform such functions as the President of the Bank may from time to time prescribe.

(c) Board of Directors; composition; oath; terms; duties; quorum; bylaws

(1) There shall be a Board of Directors of the Bank consisting of the President of the Export-Import Bank of the United States who shall serve as Chairman, the First Vice President who shall serve as Vice Chairman, and three additional persons appointed by the President of the United States by and with the advice and consent of the Senate.

(2) Of the five members of the Board, not more than three shall be members of any one political party.

(3) [Omitted.]

(4) Before entering upon his duties, each of the directors shall take an oath faithfully to discharge the duties of his office.

(5) The directors, in addition to their duties as members of the Board, shall perform such additional duties and may hold such other offices in the administration of the Bank as the President of the Bank may from time to time prescribe.

(6) A majority of the Board of Directors shall constitute a quorum.

(7) The Board of Directors shall adopt, and may from time to time amend, such bylaws as are necessary for the proper management and functioning of the Bank, and shall, in such bylaws, desig-

nate the vice presidents and other officers of the Bank and prescribe their duties.

(8)(A) The terms of the directors, including the President and the First Vice President of the Bank, appointed under this section shall be four years, except that—

(i) during their terms of office, the directors shall serve at the pleasure of the President of the United States;

(ii) the term of any director appointed after the date of enactment of this paragraph to serve before January 20, 1985, shall expire on January 20, 1985;

(iii) of the directors first appointed to serve beginning on or after January 21, 1985, two directors (other than the President and First Vice President of the Bank) shall be appointed for terms of two years, as designated by the President of the United States at the time of their appointment; and

(iv) any director first appointed to serve for a term beginning on any date after January 21, 1985, shall serve only for the remainder of the period for which such director would have been appointed if such director's term had begun on January 21, 1985. If such term would have expired before the date on which such director's term actually begins, the term of such director shall be the four-year period, or remainder thereof, as if such director had been preceded by a director whose term had begun on January 21, 1985.

(B) Of the five members of the Board appointed by the President, not less than one such member shall be selected from among the small business community and shall represent the interests of small business.

(C) Any person chosen to fill a vacancy shall be appointed only for the unexpired term of the director whom such person succeeds.

(D) Any director whose term has expired may be reappointed.

(E) Any director whose term has expired may continue to serve on the Board of Directors until the earlier of—

(i) the date on which such director's successor is qualified; or

(ii) the end of the 6-month period beginning on the date such director's term expires.

(d) Advisory Committee; appointment; composition; meetings; advice to Bank; report to Congress

(1)(A) There is established an Advisory Committee to consist of twelve members who shall be appointed by the Board of Directors on the recommendation of the President of the Bank.

(B) Such members shall be broadly representative of production, commerce, finance, agriculture, labor, services, and State government.

(2) Not less than three members appointed to the Advisory Committee shall be representative of the small business community.

(3) The Advisory Committee shall meet at least once each quarter.

(4) The Advisory Committee shall advise the Bank on its programs, and shall submit, with the report specified in section 635(b)(1)(A) of this title, its own comments to the Congress on the extent to which the Bank is meeting its mandate to provide com-

petitive financing to expand United States exports, and any suggestions for improvements in this regard.

(e) Conflicting personal interests

No director, officer, attorney, agent, or employee of the Bank shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting such individual's personal interests, or the interests of any corporation, partnership or association in which such individual is directly or indirectly personally interested.

SEC. 635a-1. EXPORT CREDIT COMPETITION.

(a) The President is authorized and requested to begin negotiations at the ministerial level with other major exporting countries to end predatory export financing programs and other forms of export subsidies, including mixed credits, in third country markets as well as within the United States. The President shall report to the Congress prior to January 15, 1979, on progress toward meeting the goals of this section.

(b) The Export-Import Bank of the United States is authorized to provide guarantees, insurance, and extensions of credit at rates and terms and other conditions which are, in the opinion of the Board of Directors of the Bank, competitive with those provided by the government-supported export credit instrumentalities of other nations.

SEC. 635a-2. IMPLEMENTATION OF REGULATIONS AND PROCEDURES TO LESSEN ADVERSE EFFECT OF LOANS AND GUARANTEES ON INDUSTRIES IN UNITED STATES: REPORT BY UNITED STATES INTERNATIONAL TRADE COMMISSION.

The Bank shall implement such regulations and procedures as may be appropriate to insure that full consideration is given to the extent to which any loan or financial guarantee is likely to have an adverse effect on industries, including agriculture, and employment in the United States, either by reducing demand for goods produced in the United States or by increasing imports to the United States. To carry out the purposes of this subsection, the Bank shall request, and the United States International Trade Commission shall furnish, a report assessing the impact of the Bank's activities on industries and employment in the United States. Such report shall include an assessment of previous loans or financial guarantees and shall provide recommendations concerning general areas which may adversely affect domestic industries, including agriculture, and employment. After October 1, 1983, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. In all cases to which this section applies, the Bank shall consider and address in writing the views of parties or persons who may be substantially adversely affected by the loan or guarantee prior to taking final action on the loan or guarantee. This requirement does not subject the Bank to the provisions of subchapter II of chapter 5 of title 5, United States Code.

SEC. 635a-3. EXPORT-IMPORT BANK FINANCING TO MATCH FOREIGN FINANCING.

(a) Noncompetitive financing; inquiry by Secretary; notification of foreign country and prospective parties to transaction

(1) Upon receipt of information that foreign sales to the United States are being offered involving foreign official export credits which exceed limits under existing standstills, minutes, or practices to which the United States and other major exporting countries have agreed, irrespective of whether these credits are being offered by governments which are signatories to such standstills, minutes, or practices, the Secretary of the Treasury shall immediately conduct an inquiry to determine whether "noncompetitive financing" is being offered. The inquiry, and where appropriate, the determination and authorization to the Export-Import Bank of the United States referred to in this section shall be completed and made within 60 days of the receipt of such information.

(2) If the Secretary determines that such foreign "noncompetitive" financing is being offered, the Secretary shall request the immediate withdrawal of such financing by the foreign official export credit agency involved.

(3) If the offer is not withdrawn or if there is no immediate response to the withdrawal request, the Secretary of the Treasury shall notify the country offering such financing and all parties to the proposed transaction that the Eximbank may be authorized to provide competing United States sellers with financing to match that available through the foreign official export financing entity.

(b) Issuance of authorization to Bank to provide guarantees, insurance, and credits to competing United States sellers

The Secretary of the Treasury shall issue such authorization to the Bank to provide guarantees, insurance and credits to competing United States sellers, unless the Secretary determines that—

(1) the availablity of foreign official noncompetitive financing is not likely to be a significant factor in the sale; or

(2) the foreign noncompetitive financing has been withdrawn.

(c) Provision of financing by Bank pursuant to authorization

Upon receipt of authorization by the Secretary of the Treasury, the Export-Import Bank may provide financing to match that offered by the foreign official export credit entity: *Provided, however,* That loans, guarantees and insurance provided under this authority shall conform to all provisions of the Export-Import Bank Act of 1945, as amended [12 U.S.C.A. § 635 et seq.].

SEC. 635a-4. GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY (P.L. 97-290, SEC. 206, AMENDED BY P.L. 98-181, SEC. 616(b)).

The Export-Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other public or private creditors to export trading companies as defined in section 1843(c)(14)(F)(i) of this title, or to other exporters, when such loans are secured by export accounts receivable, inventories of exportable goods, accounts receivable from leases, performance contracts, grant commitments, participation fees, member dues, revenue from publications, or such other collateral as the Board of Directors may deem appropriate, and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size, and minority businesses or agricultural concerns. Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

SEC. 635b. CAPITALIZATION OF BANK; METHOD OF CAPITAL STOCK PAYMENTS; PUBLIC-DEBT TRANSACTIONS; ISSUANCE OF STOCK CERTIFICATES.

The Export-Import Bank of the United States shall have a capital stock of $1,000,000,000 subscribed by the United States. Payment for $1,000,000 of such capital stock shall be made by the surrender to the Bank for cancellation of the common stock issued prior to July 31, 1945, by the Bank and purchased by the United States. Payment for $174,000,000 of such capital stock shall be made by the surrender to the Bank for cancellation of the preferred stock heretofore issued by the Bank and purchased by the Reconstruction Finance Corporation. Payment for the $825,000,000 balance of such capital stock shall be subject to call at any time in whole or in part by the Board of Directors of the Bank. For the purpose of making payments of such balance, the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities issued after July 31, 1945, under chapter 31 of Title 31 (the Second Liberty Bond Act) and the purposes for which securities may be issued under that chapter are extended to include such purpose. Payment under this section of the subscription of the United States to the Bank and repayments thereof shall be treated as public-debt transactions of the United States. Certificates evidencing stock ownership of the United States shall be issued by the Bank to the President of the United States, or to such other person or persons as the President may designate from time to time, to the extent of the common and preferred stock surrendered and other payments made for the capital stock of the Bank under this section.

SEC. 635c. REIMBURSEMENT OF THE RECONSTRUCTION FINANCE CORPORATION FOR CANCELLATION OF BANK STOCK; PUBLIC DEBT TRANSACTIONS; PAYMENT OF ACCUMULATED DIVIDENDS.

(a) The Secretary of the Treasury shall pay to the Reconstruction Finance Corporation the par value of the preferred stock upon its surrender to the Bank for cancellation. For the purpose of making such payments to the Reconstruction Finance Corporation the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include such purpose. Payment under this subsection to the Reconstruction Finance Corporation shall be treated as public-debt transactions of the United States.

(b) Any dividends on the preferred stock accumulated and unpaid to the date of its surrender for cancellations shall be paid to the Reconstruction Finance Corporation by the Bank.

SEC. 635d. ISSUANCE OF DEBENTURES, BONDS, ETC.; OBLIGATIONS REDEEMABLE; PAYMENT OF INTEREST; OBLIGATIONS PURCHASABLE BY SECRETARY OF TREASURY; PUBLIC-DEBT TRANSACTIONS.

The Export-Import Bank of the United States is authorized to issue from time to time for purchase by the Secretary of the Treasury its notes, debentures, bonds, or other obligations; but the aggregate amount of such obligations outstanding at any one time shall not exceed $6,000,000,000. Such obligations shall be redeemable at the option of the Bank before maturity in such manner as may be stipulated in such obligations and shall have such maturity as may be determined by the Board of Directors of the Bank with the approval of the Secretary of the Treasury. Each such Bank obligation issued to the Treasury after January 4, 1975, shall bear interest at a rate not less than the current average yield on outstanding marketable obligations of the United States of comparable maturity during the month preceding the issuance of the obligation of the Bank as determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Bank issued hereunder and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities issued after July 31, 1945, under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include such purpose. Payment under this section of the purchase price of such obligations of the Bank and repayments thereof by the Bank shall be treated as public-debt transactions of the United States.

SEC. 635e. RESTRICTIONS ON AMOUNT OUTSTANDING; PRESIDENTIAL DETERMINATION OF SUFFICIENCY OF AUTHORITY; REPORT TO CONGRESS; ELIMINATION OF EXCESS AUTHORITY; CONTINUING AVAILABILITY OF FUNDS; LIMITATION ON AMOUNT AND PURPOSES OF LOANS AND FINANCIAL GUARANTEES FOR EXPORT TO UNION OF SOVIET SOCIALIST REPUBLICS; PRESIDENTIAL INCREASE OF LIMITATION.

(a)(1) The Export-Import Bank of the United States shall not have outstanding at any one time loans, guaranties, and insurance in an aggregate amount in excess of $40,000,000,000. All spending and credit authority provided under this subchapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(2)(A)(i) Not later than March 31 of each fiscal year, the President of the United States shall determine whether the authority available to the Bank for such fiscal year will be sufficient to meet the Bank's needs, particularly those needs arising from—

(I) increases in the level of exports unforeseen at the time of the original budget request for such fiscal year;

(II) any inceased foreign export credit subsidies; or

(III) the lack of progress in negotiations to reduce or eliminate export credit subsidies.

(ii) Not later than April 15 of each year, the President of the United States shall transmit to the Congress a report on such determination.

(B)(i) If the President of the United States finds that the amount of direct loan authority or guarantee authority available to the Bank for the fiscal year involved exceeds the amount which will be necessary to carry out the Bank's functions consistent with the availability of qualified applications and limitations imposed by law during such year, the President of the United States shall promptly transmit to the Congress a request for legislation to eliminate the amount of such excess direct loan, loan guarantee, or insurance authority.

(ii) The Bank shall continue to make remaining amounts of its authority available for the fiscal year involved, in accordance with its practices and the requirements of this chapter, unless otherwise directed pursuant to law.

(3) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated $145,259,000 for fiscal year 1987 to cover the subsidy cost of new direct loans obligated by the Bank in that fiscal year. Any amounts appropriated under this paragraph shall be permanent additions to the capital and reserves of the Bank.

(b) After January 4, 1975, the Bank shall not approve any loans or financial guarantees, or combination thereof, in connection with exports to the Union of Soviet Socialist Republics in an aggregate amount in excess of $300,000,000. No such loan or financial guarantee, or combination thereof, shall be for the purchase, lease, or procurement of any product or service for production (including processing and distribution) of fossil fuel energy resources. Not more than $40,000,000 of such aggregate amount shall be for the purchase, lease, or procurement of any product or service which involves research or exploration of fossil fuel energy resources. The President may establish a limitation in excess of $300,000,000 if the President determines that such higher limitation is in the national interest and if the President reports such determination to the Congress together with the reasons therefor, including the amount of such proposed increase which would be available for the export of products and services for research, exploration, and production (including processing and distribution) of fossil fuel energy resources in the Union of Soviet Socialist Republics, and if, after the receipt of such report tegether with the reasons, the Congress adopts a concurrent resolution approving such determination.

SEC. 635f. TERMINATION DATE OF BANK'S FUNCTIONS; EXCEPTIONS; LIQUIDATION.

Export-Import Bank of the United States shall continue to exercise its functions in connection with and in furtherance of its objects and purposes until the close of business on September 30, 1992, but the provisions of this section shall not be construed as preventing the Bank from acquiring obligations prior to such date which mature subsequent to such date or from assuming prior to such date liability as guarantor, endorser, or acceptor of obligations which mature subsequent to such date or from issuing, either prior or subsequent to such date, for purchase by the Secretary of the Treasury or any other purchasers, its notes, debentures, bonds, or other obligations which mature subsequent to such date or from continuing as a corporate agency of the United States and exercising any of its functions subsequent to such date for purposes of orderly liquidation, including the administration of its assets and the collection of any obligations held by the bank.

SEC. 635g. REPORT TO CONGRESS.

(a) Annual submission of report

The Export-Import Bank of the United States shall transmit to the Congress annually a complete and detailed report of its operations. Such report shall be as of the close of business on the last day of each fiscal year.

(b) Actions taken by Bank to aid small business

The report shall contain a description of actions taken by the-Bank in pursuance of the policy of aiding, counseling, assisting, and protecting, insofar as is possible, the interests of small business concerns and of the activities of the member of the Board appointed to represent the interests of small business. In addition, the Bank shall include in the report a description of specific activities and programs undertaken by it to achieve the policy of section 3261 of Title 22 (section 501 of the Nuclear Non-Proliferation Act of 1978), and section 2151q of Title 22 (section 119 of the Foreign Assistance Act of 1961), as required by section 635(b)(1)(C) of this title.

(c) Report on allocation of sum set aside for small business exports

(1) The Bank shall include in its annual report to the Congress a report on the allocation of the sums set aside for small business exports pursuant to section 635(b)(1)(E) of this title.

(2) Such report shall specify—

(A) the total number and dollar volume of loans made from the sums set aside;

(B) the number and dollar volume of loans made through the consortia program under section 635(b)(1)(E)(vii) of this title;

(C) the amount of guarantees and insurance provided for small business exports;

(D) the number of recipients of financing from the sums set aside who have not previously participated in the Bank's programs;

(E) the number of commitments entered into in amounts less than $500,000; and

(F) any recommendations for increasing the participation of banks and other institutions in the programs authorized under section 635(b)(1)(E) of this title.

(3) For the purpose of this subsection, the Bank's report shall be transmitted to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives.

(d) Actions taken by Bank to aid industries, preserve and create highly skilled jobs, and enhance opportunity for business growth and expansion; comments of Advisory Committee

(1) The report shall include a detailed description of all actions which have been taken by the Bank or which will be taken by the Bank—

(A) to maintain the competitive position of key linkage industries in the United States;

(B) to support industries which are engaged in the export of high value added products;

(C) to support industries which are engaged in the development of new capital goods technology;

(D) to preserve and create high skilled jobs in the United States economy; and

(E) to enhance the opportunity for growth and expansion of small businesses and entrepreneurial enterprises.

(2) Such report shall include the comments of the Advisory Committee regarding the objectives specified in paragraph (1).

(e) GAO report on interest subsidy payments

(1) REPORT REQUIRED.—Not later than March 1, 1988, the Comptroller General of the United States shall transmit to both Houses of the Congress a report on the manner in which and the extent to which the Bank is exercising its authority to make interest subsidy payments under section 2(f).

(2) CONTENTS OF REPORT.—The report required under paragraph (1) with respect to interest subsidy payments shall—

(A) compare the efficiency and competitiveness of interest subsidy payments with the efficiency and competitiveness of direct Bank financing of an equivalent value of exports;

(B) compare the cost, to the United States Government, of making interest subsidy payments and the impact of such payments on the financial condition of the Bank with the cost and impact of direct Bank financing of an equivalent value of exports;

(C) compare the impact of interest subsidy payments on the Federal budget with the impact on such budget of direct Bank financing of an equivalent value of exports; and

(D) include all views and recommendations of the Advisory Committee of the Bank which are submitted to the Comptroller General of the United States before December 1, 1987.

SEC. 635h. EXEMPTION FROM PROHIBITION OF SECTION 955 OF TITLE 18.

Notwithstanding the provisions of section 955 of Title 18, any person, including any individual, partnership, corporation, or association, may act for or participate with the Export-Import Bank of the United States in any operation or transaction, or may acquire any obligation issued in connection with any operation or transaction, engaged in by the Bank.

SEC. 635i. ASSUMPTION OF RIGHTS AND LIABILITIES OF EXISTING BANK; TRANSFER OF FUNDS, PROPERTY, PERSONNEL, ETC.; CONTINUATION OF DIRECTORS IN OFFICE.

The Export-Import Bank of the United States created by section 635(a) of this title shall by virtue of this chapter succeed to all of the rights and assume all of the liabilities of Export-Import Bank of Washington, a District of Columbia corporation, and any outstanding capital stock of the District of Columbia corporation shall be deemed to have been issued by and shall be capital stock of the corporation created by this chapter and all of the personnel, proptery, records, funds (including all unexpended balances of appropriations, allocations, or other funds now available), assets, contracts, obligations, and liabilities of the District of Columbia corporation are transferred to, accepted, and assumed by the corporation created by this chapter without the necessity of any act or acts on the part of the corporation created by this chapter or of the District of Columbia corporation, their officers, employees, or agents or of any other department or agency of the United States to carry out the purposes and it will shall be unnecssary to take any further action to effect the dissolution or liquidation of Export-Import Bank of Washington, a District of Columbia corporation. The members of the Board of Directors of the District of Columbia corporation, appointed pursuant to the provisions of this chapter, shall, during the unexpired portion of the terms for which they were appointed, continue in office as members of the Board of Directors of the corporation created by this chapter.

SEC. 635i-1. SPECIAL FACILITIES IN SUPPORT OF UNITED STATES EXPORTS.

The Bank is authorized to establish general facilities consisting of guarantees and insurance in support of export transactions to Brazil in the aggregate amount of $1,500,000,000 and to Mexico in the aggregate amount of $500,000,000. No such guarantees may be made, or insurance issued, after March 31, 1985.

SEC. 635i-2. CAPITAL LEVEL OF BANK.

After fiscal year 1983, if at the end of any fiscal quarter the value of the total capital stock and retained earnings of the Bank falls below 50 per centum of the value of the total capital stock and retained earnings of the Bank at the end of fiscal year 1983, the Board of Directors shall notify the Congress of the decrease in the level of the capital stock of the Bank not later than thirty days after the end of the fiscal quarter involved and the Congress shall take appropriate action.

SEC. 15. TIED AID CREDIT PROGRAM AND FUND. [sec. 635i-3. added by P.L. 99-472]

(a) FINDINGS.—The Congress finds that—

(1) tied aid and partially untied aid credits offered by other countries are a predacious method of financing exports because of their market-distorting effects;

(2) these distortions have caused the United States to lose export sales, with resulting losses in economic growth and employment;

(3) these practices undermine market mechanisms that would otherwise result in export purchase decisions made on

the basis of price, quality, delivery, and other factors directly related to the export, where official financing is not subsidized and would be a neutral factor in the transaction;

(4) support of commercial exports by donor countries with tied aid and partially untied aid credits impedes the growth of developing countries because it diverts development assistance funds from essential developmental purposes; and

(5) there should be established in the Bank a temporary tied aid program to target the export markets of those countries which make extensive use of tied aid or partially untied aid credits for commercial advantage for the purpose of facilitating the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes, and such program should be aggressively used until such an arrangement is established.

(b) ESTABLISHMENT OF TIED AID CREDIT PROGRAM.—

(1) IN GENERAL.—For the purpose of facilitating the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes, the Bank shall establish a tied aid credit program under which grants shall be made from funds available in the Tied Aid Credit Fund established under subsection (c)—

(A) to supplement the financing of a United States export when there is a reasonable expectation that predacious financing will be provided by another country for a sale by a competitor of the United States exporter with respect to such export;

(B) to supplement the financing of United States exports to foreign markets which are actual or potential export markets for any country which the Bank determines—

(i) engages in predacious official export financing through the use of tied aid or partially united aid credits; and

(ii) impedes negotiations to eliminate the use of such credits for commercial purposes; or

(C) to supplement the financing of United States exports under such other circumstances as the Bank may determine to be appropriate for carrying out the purposes of this section.

(2) ADMINISTRATION OF PROGRAM.—The tied aid credit program shall be administered by the Bank—

(A) in consultation with the Secretary of the Treasury and in accordance with the Secretary's recommendations on how such credits could be used most effectively and efficiently to promote the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially united aid credits for commercial purposes;

(B) in cooperation with private financial institutions or entities, as appropriate; and

(C) in consultation with the National Advisory Council on International Monetary and Financial Policies.

(3) COORDINATION WITH OTHER EXPORT FINANCING.—Under the tied aid credit program, the Bank may combine grants from the Tied Aid Credit Fund with—

(A) any guarantee, insurance, or other extension of credit provided by the Bank under this Act;

(B) any export financing provided by any private financial institution or other entity; and

(C) any other type of export financing,

in such manner and under such terms as the Bank determines to be appropriate, including combinations of export financing in the form of blended financing and parallel financing.

(4) INFORMATION ON COUNTRIES WHICH ENGAGE IN OFFICIAL PREDACIOUS EXPORT FINANCING AND IMPEDE NEGOTIATIONS.—In order to assist the Bank to make the most efficient use of funds available for supplemental financing under paragraph (1)(B), the United States Trade Representative and the Secretary of Commerce may provide information on principal sectors and key markets of countries described in paragraph (1)(B) to the Bank, the Secretary, and the National Advisory Council on International Monetary and Financial Policies.

(c) TIED AID CREDIT FUND.—

(1) IN GENERAL.—There is hereby established within the Bank a fund to be known as the "Tied Aid Credit Fund" (hereinafter in this section referred to as the "Fund"), consisting of such amounts as may be appropriated to the Fund pursuant to the authorization contained in subsection (e).

(2) EXPENDITURES FROM FUND.—Amounts in the Fund shall be available for grants made by the Bank under the tied aid credit program established pursuant to subsection (b) and to reimburse the Bank for the cost of any tied aid credits authorized by the Bank during fiscal year 1986.

(d) CONSISTENCY WITH ARRANGEMENT.—Any export financing involving the use of a grant under the tied aid credit program shall be consistent with the procedures established by the Arrangement, as in effect at the time such financing is approved.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is hereby authorized to be appropriated to the Fund for fiscal years 1987 and 1988, $300,000,000. Except as provided in paragraph (2), such sums shall remain available until expended.

(2) RESCISSION AUTHORITY.—

(A) DETERMINATION BY PRESIDENT.—If the President determines that any amount appropriated to the Fund is not required to achieve the purpose of the Fund, the President shall transmit a special message of such determination to the Congress in the manner provided in section 1012(a) of the Impoundment Control Act of 1974.

(B) SPECIAL MESSAGE.—Any message under this paragraph shall be treated as a special message under such section for purposes of such Act.

(f) NONREVIEWABILITY.—No action taken under this section shall be reviewable by any court, except for abuse of discretion.

(g) REPORT TO CONGRESS.—

(1) REPORT REQUIRED.—Before the end of the 6-month period beginning on the date of enactment of this section and every six months thereafter, the Bank, in consultation with the Secretary, shall prepare and transmit a report on tied aid credits

to the President of the Senate and the Speaker of the House of Representatives.

(2) CONTENTS OF REPORT.—Each report required by paragraph (1) shall contain a description of—

(A) the principal offers of predacious financing by foreign countries during the course of the previous 6 months;

(B) steps taken by the United States to combat specific predacious financing practices of foreign countries;

(C) any use by the Bank of the Tied Aid Credit Fund to match specific predacious financing practices of foreign countries and to initiate tied aid credit offers;

(D) any additional steps the United States may take in the future to discourage use of predacious financing practices; and

(E) any progress achieved in negotiations to establish a comprehensive international arrangement restricting the use of tied aid and partially untied credits for commercial purposes.

(3) CONFIDENTIAL INFORMATION.—To the extent the Bank determines any information required to be included in the report under this subsection should not be made public, such information may be submitted separately on a confidential basis or provided orally, rather than in written form, to the Chairmen and ranking minority Members of the Committees of the Senate and the House of Representatives with jurisdiction over the subject matter of the report.

(h) DEFINITIONS.—For the purpose of this section—

(1) TIED AID AND PARTIALLY UNTIED AID CREDIT.—The terms "tied aid credit" and "partially untied aid credit" means any credit which—

(A) has a grant element greater than zero percent, as determined by the Development Assistance Committee of the Organization for Economic Cooperation and Development;

(B) is, in fact or in effect, tied to—

(i) the procurement of goods or services from the donor country, in the case of tied aid credit; or

(ii) the procurement of goods or services from a restricted number of countries, in the case of partially untied aid credit; and

(C) is financed either exclusively from public funds or partly from public and partly from private funds.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(3) ARRANGEMENT.—The term "Arrangement" means the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development.

(4) BLENDED FINANCING.—The term "blended financing" means financing provided through any combination of official development assistance, official export credits, and private commercial credit which is integrated into a single agreement with a single set of financial terms.

(5) PARALLEL FINANCING.—The term "parallel financing" means financing provided by any combination of official devel-

opment assistance, official export credits, and private commercial credit which is not integrated into a single agreement and does not have a single set of financial terms.

SEC. 16. SALE OF BANK LOANS. [added by P.L. 99-509]

(a) REQUIRED SALES TO PUBLIC.—The Board of Directors shall take such actions as may be necessary to ensure that loans made by the Bank under this Act are sold to the public in amounts sufficient to provide a net reduction in outlays of not less than $1,500,000,000 in fiscal year 1987 from the proceeds of such sales.

(b) PROCEDURES AND TERMS OF SALES.—

(1) ESTABLISHMENT OF GUIDELINES.—The Board of Directors shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of the loans, including terms that will ensure that the sale of the loans will bring the highest possible return to the Federal Government.

(2) ASSISTANCE BY FEDERAL FINANCING BANK.—In selling loans to the public under subsection (a), the Board of Directors shall use the Federal Financing Bank as an agent to sell the loans, unless the Board of Directors determines that the sale of loans directly by the Export-Import Bank will result in a higher rate of return to the Federal Government. If the Board of Directors determines to sell loans directly under this paragraph, the Board shall notify the Federal Financing Bank of such determination and the loans involved and, to the extent practicable, shall implement any reasonable recommendations that may be made by the Federal Financing Bank with respect to the procedures and terms applicable to the sale.

(c) REPORTS TO CONGRESS.—

(1) NOTIFICATION OF INITIAL LOAN SALE.—Not less than 20 days before the initial sale of loans under subsection (a), the Board of Directors shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives containing an estimate of the amount of the discount at which loans will be sold at such initial sale and an estimate of the discount at which loans will be sold at each subsequent sale during fiscal year 1987.

(2) REPORTS BY BANK.—The Board of Directors shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Board of Directors under this section. Each such report shall include the guidelines established under subsection (b)(1), a description of the loans sold under subsection (a), and an analysis of the net reduction in outlays provided by the sale of such loans. The Board of Directors shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subsequent reports each 60 days thereafter through the end of fiscal year 1987.

(3) REPORTS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall conduct an audit and eval-

uation of the activities of the Board of Directors described in each report submitted under paragraph (1) or (2), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials for the Board of Directors as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

(d) SECURITIES LAWS NOT APPLICABLE TO SALES.—The sale of any loan under this section shall be deemed to be a sale of exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) and section 3(a(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)). The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations as may be necessary in the public interest or for the protection of investors.

Subchapter II—Export Financing

[P.L. 90-390]

SEC. 635j. EXPORT FINANCING PROGRAM TO FOSTER FOREIGN TRADE AND COMMERCIAL INTEREST OF THE UNITED STATES.

(a) Congressional statement of policy

It is the policy of the Congress that the Export-Import Bank of the United States should facilitate through loans, guarantees, and insurance (including coinsurance and reinsurance) those export transactions which, in the judgment of the Board of Directors of the Bank, offer sufficient likelihood of repayment to justify the Bank's support in order to actively foster the foreign trade and long-term commercial interest of the United States.

(b) Designation of transactions on books of the Bank; limitation on commitments

The Bank shall specially designate loans, guarantees, and insurance on the books of the Bank made under authority of this subchapter. In connection with guarantees and insurance, not less than 25 per centum of the related contractual liability of the Bank shall be taken into account for the purpose of applying the limitation imposed by section 635e of this title; but the full amount of the related contractual liability of such guarantees and insurance shall be taken into account for the purpose of applying the limitation in section 635(c)(1) of this title, concerning the amount of guarantees and insurance the Bank may have outstanding at any one time thereunder. The aggregate amount of loans plus 25 per centum of the contractual liability of guarantees and insurance outstanding at any one time under this subchapter shall not exceed $500,000,000.

SEC. 635k. APPORTIONMENT OF LOSSES INCURRED ON LOANS, GUARANTEES, AND INSURANCE; REIMBURSEMENT; CONTINGENT OBLIGATIONS.

In the event of any losses, as determined by the Board of Directors of the Bank, incurred on loans, guarantees, and insurance extended under this subchapter, the first $100,000,000 of such losses shall be borne by the Bank; the second $100,000,000 of such losses shall be borne by the Secretary of the Treasury; and any losses in excess thereof shall be borne by the Bank. Reimbursement of the Bank by the Secretary of the Treasury of the amount of losses which are to be borne by the Secretary of the Treasury as aforesaid shall be from funds made available pursuant to section 635*l* of this title. All guarantees and insurance issued by the Bank shall be considered contingent obligations backed by the full faith and credit of the Government of the United States of America.

SEC. 635l. AUTHORIZATION OF APPROPRIATION OF FUND FOR LOSSES.

There are hereby authorized to be appropriated to the Secretary of the Treasury without fiscal year limitation $100,000,000 to cover the amount of any losses which are to be borne by the Secretary of the Treasury as provided in section 635k of this title.

SEC. 635m. LOANS, GUARANTEES, AND INSURANCE SUBJECT TO THE PROVISIONS OF THIS CHAPTER.

Nothing in this subchapter shall be construed as a limitation on the powers of the Bank under subchapter I of this chapter; and except as to the standard of reasonable assurance of repayment required under section 635(b)(1) of this title, all loans, guarantees, and insurance extended hereunder shall be subject to the provisions of subchapter I of this chapter, and to the policies of the Bank with respect to terms of repayment, interest rates, fees, and premiums applicable to loans, guarantees, and insurance extended under subchapter I of this chapter.

SEC. 635n. PROHIBITION OF LOANS, GUARANTEES, AND INSURANCE AS TO SALES OF DEFENSE ARTICLES OR SERVICES.

The Bank shall not extend loans, guarantees, or insurance under this subchapter in connection with the sale of defense articles or defense services.

Subchapter III—Tied Aid Credit Export Subsidies

[Trade and Development Enhancement Act of 1983; P.L. 98-181, Title III, Part C]

SEC. 635o. CONGRESSIONAL STATEMENT OF PURPOSE.

The purpose of this subchapter is—

(1) to expand employment and economic growth in the United States by expanding United States exports to the markets of the developing world;

(2) to stimulate the economic development of countries in the developing world by improving their access to credit for the importation of United States products and services for developmental purposes;

(3) to neutralize the predatory financing engaged in by many nations whose exports compete with United States exports, and thereby restore export competition to a market basis; and

(4) to encourage foreign governments to enter into effective and comprehensive agreements with the United States to end the use of tied aid credits for exports, and to limit and govern the use of export credit subsidies generally.

SEC. 635p. PRESIDENTIAL MANDATE TO NEGOTIATE: OBJECTIVES.

The President shall vigorously pursue negotiations to limit and set rules for the use of tied aid for exports. The negotiating objectives of the United States should include reaching agreements—

(1) to define the various forms of tied aid credit, particularly mixed credits under the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development (hereinafter in this part referred to as the "Arrangement");

(2) to phase out the use of government-mixed credits by a date certain;

(3) to set rules governing the use of public-private cofinancing, or other forms of mixed financing, which may have the same result as government-mixed credits of drawing on concessional development assistance to produce subsidized export financing;

(4) to raise the threshold for notification of the use of tied aid credit to a 50 per centum level of concessionality;

(5) to improve notification procedures so that advance notification must be given on all uses of tied aid credit; and

(6) to prohibit the use of tied aid credit for production facilities for goods which are in structural oversupply in the world.

SEC. 635q. ESTABLISHMENT OF TIED AID CREDIT PROGRAM IN UNITED STATES EXPORT-IMPORT BANK.

(a) Establishment and elements of program; cooperation with Agency for International Development and private institutions and entities

(1) The Chairman of the Export-Import Bank of the United States shall establish, within the Export-Import Bank of the United States, a program of tied aid credits for United States exports.

(2) The program shall be carried out in cooperation with the Agency for International Development and with private financial institutions or entities, as appropriate.

(3) The program may include—

(A) the combined use of the credits, loans, or guarantees offered by the Export-Import Bank of the United States with concessional financing or grants offered by the Agency for International Development, by methods including the blending of the financing of, or parallel financing by, the Bank and the Agency for International Development; and

(B) the combined use of credits, loans, or guarantees offered by the Bank, with financing offered by private financial institutions or entities, by methods including the blending of the financing of, or parallel financing by, the Bank and private institutions or entities.

(b) Purpose of program

The purpose of the tied aid credit program under this section is to offer or arrange for financing for the export of United States goods and services which is substantially as concessional as foreign financing for which there is reasonable proof that such foreign financing is being offered to, or arranged for, a bona fide foreign competitor for a United States export sale.

(c) Fund

The Chairman of the Bank is authorized to establish a fund, as necessary, for carrying out the tied aid credit program described in this section.

(d) Availability of concessional financing or grants

Concessional financing or grants offered by the Agency for International Development for the purposes of the mixed financing program established under this section shall be made available in accordance with the provisions of subsections (c) and (d) of section 635r of this title.

SEC. 635r. ESTABLISHMENT OF TIED AID CREDIT PROGRAM IN AGENCY FOR INTERNATIONAL DEVELOPMENT.

(a) Establishment and elements of program

The Administrator of the Agency for International Development shall establish within the Agency a program of tied aid credits for United States exports. The program shall be carried out in cooperation with the Export-Import Bank of the United States and with private financial institutions or entities, as appropriate. The program may include—

(1) the combined use of the credits, loans, or guarantees offered by the Bank with concessional financing or grants offered by the Agency for International Development, by methods including the blending of the financing of, or parallel financing by, the Bank and the Agency for International Development; and

(2) the combination of concessional financing or grants offered by the Agency for International Development with financing offered by private financial institutions or entities, by methods including the blending of the financing of, or parallel financing by, the Agency for International Development and private institutions or entities.

(b) Combinations of funds with financing by Export-Import Bank or private commercial financing

These funds may be combined with financing by the Export-Import Bank of the United States or private commercial financing in order to offer, or arrange for, financing for the exportation of United States goods and services which is substantially as concessional as foreign financing for which there is reasonable proof that such foreign financing is being offered to, or arranged for, a bona fide foreign competitor for a United States export sale.

(c) Limitation on use of Agency funds; authorization for establishment of fund

(1) Funds of the Agency for International Development which are used to carry out a tied aid credit program authorized by subsections (a) and (b) of this section shall be offered only to finance United States exports which can reasonably be expected to contribute to the advancement of the development objectives of the importing country or countries, and shall be consistent with the economic, security, and political criteria used to establish country allocations of Economic Support Funds.

(2) The Administrator of the Agency for International Development is authorized to establish a fund, as necessary, for carrying out a tied aid credit financing program as described in this section.

(d) Use of Economic Support Funds

The Administrator of the Agency for International Development may draw on Economic Support Funds allocated for Commodity Import Programs to finance a tied aid credit activity.

SEC. 635s. IMPLEMENTATION.

(a)(1) The National Advisory Council on International Monetary and Financial Policies shall coordinate the implementation of the tied aid credit programs authorized by sections 635q and 635r of this title.

(2) No financing may be approved under the tied aid credit programs authorized by section 635q or 635r of this title without the unanimous consent of the members of the National Advisory Council on International Monetary and Financial Policies.

SEC. 635t. DEFINITIONS.

For purposes of this subchapter—

(1) the term "tied aid credit" means credit—

(A) which is provided for development aid purposes;

(B) which is tied to the purchase of exports from the country granting the credit;

(C) which is financed either exclusively from public funds, or, as a mixed credit, partly from public and partly from private funds; and

(D) which has a grant element, as defined by the Development Assistance Committee of the Organization for Economic Cooperation and Development, greater than zero percent;

(2) the term "government-mixed credits" means the combined use of credits, insurance, and guarantees offered by the Export-Import Bank of the United States with concessional financing or grants offered by the Agency for International Development to finance exports;

(3) the term "public-private cofinancing" means the combined use of either official development assistance or official export credit with private commercial credit to finance exports;

(4) the term "blending of financings" means the use of various combinations of official development assistance, official export credit, and private commercial credit, integrated into a

single package with a single set of financial terms, to finance exports;

(5) the term "parallel financing" means the related use of various combinations of separate lines of official development assistance, official export credits, and private commercial credit, not combined into a single package with a single set of financial terms, to finance exports; and

(6) the term "Bank" means the Export-Import Bank of the United States.

2. Agriculture Export Sales

Food for Peace Act of 1966

[7 U.S.C. 1707a, P.L. 89-808, as amended by P.L. 95-501, P.L. 97-98, P.L. 98-623 and P.L. 99-198]

[SEC. 2. Amendments of the Agricultural Trade Development and Assistance Act of 1954 as amended (P.L. 480).]

[SEC. 3. Amendments of other agricultural Acts.]

SEC. 4. (a) Commercial export sales of agricultural commodities out of private stocks on credit terms of not to exceed three years may be financed by the Commodity Credit Corporation under its export credit sales program.

(b)(1) Export sales of agricultural commodities out of Commodity Credit Corporation and private stocks on credit terms in excess of three years, but not more than ten years, may be financed by the Commodity Credit Corporation. In addition, the corporation may guarantee the repayment of loans made to finance such sales.

(2) No export sale may be financed, and no loans may be guaranteed, under this subsection unless the Secretary of Agriculture determines that the sale will—

(A) develop, expand, or maintain the importing nation as a foreign market, on a long-term basis, for the commercial sale and export of United States agricultural commodities without displacing normal commercial sales;

(B) otherwise improve the capability of the importing nation to purchase and use, on a long-term basis, United States agricultural commodities; or

(C) otherwise promote the export of United States agricultural commodities.

(3) The Secretary is encouraged, to the maximum extent practicable, to finance or guarantee the export sales of agricultural commodities under this subsection to purchasers from—

(A) countries that are previous recipients of credit extended under title I of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1701 et seq.);

(B) countries unable, as determined by the Secretary, to utilize other short-term export credit programs offered by the Secretary or the Commodity Credit Corporation; and

(C) countries that are friendly countries, as defined in section 103(d) of such Act (7 U.S.C. 1703(d)).

(4) Consistent with the provisions of paragraph (2) of this subsection, intermediate credit financing or guarantees under this subsection may be made available for the following uses:

(A) to establish reserve stocks consistent with international commodity agreements or other stock building plans acceptable to the United States;

(B) the export sale of breeding animals (including, but not limited to, cattle, swine, sheep, and poultry), including the cost of freight from the United States to designated points of entry in other nations;

(C) where determined feasible, for the establishment of facilities in the importing nation to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities (through the use of local currency generated from the import and sale of United States agricultural commodities to finance all or part of such facilities);

(D) to meet competition for agricultural export sales;

(E) to finance the importation of agricultural commodities by developing nations for use in meeting their food and fiber needs; and

(F) otherwise to promote the export sales of agricultural commodities.

(5) Intermediate credit financing or guarantees under this subsection may not be used for the purpose of foreign aid or debt rescheduling.

(6)(A) The terms of credit for export sales financed under this subsection shall include the following terms:

(i) Repayment shall be in dollars with interest at a rate determined by the Secretary.

(ii) The Secretary may, if the Secretary deems such action appropriate to protect the interests of the United States, require an initial payment from the purchaser at the time of sale or shipment of the agricultural commodity.

(B) Contracts of guarantee under this susection shall contain such terms and conditions as the Commodity Credit Corporation shall determine.

(7) The Secretary shall, wherever feasible, obtain commitments from purchasers that will prevent resale or transshipment to other nations of agricultural commodities purchased with financing or guarantees provided under this subsection.

(8) The provisions of the cargo preference laws shall not apply to export sales financed or guaranteed under this subsection.

(9) The authority provided under this subsection shall be in addition to, and not in place of, any authority granted to the Secretary or the Commodity Credit Corporation under any other provision of law.

(10) For purposes of guaranteeing export sales under this subsection, the Commodity Credit Corporation shall make available—

(A) for each of the fiscal years ending September 30, 1986, through September 30, 1988, not less than $500,000,000; and

(B) for each of the fiscal years ending September 30, 1989 and September 30, 1990, not more than $1,000,000,000.

(c) The term "agricultural commodity" as used in this section includes any agricultural commodity including fish, without regard to whether such fish are harvested in aquacultural operations or product thereof.

(d)(1) There is hereby established in the Treasury a revolving fund to be known as the Agricultural Export Credit Revolving Fund, which shall be available without fiscal year limitation for use by the Commodity Credit Corporation (hereafter referred to in this subsection as the "Corporation" for financing in accordance with this section and section 5(f) of the Commodity Credit Corporation Charter Act the following—

(A) commercial export sales of United States agricultural commodities out of private stocks or stocks owned or controlled by the Corporation on credit terms of not to exceed three years;

(B) export sales of United States breeding animals (including but not limited to, cattle, swine, sheep, and poultry), including the cost of freight from the United States to designated points of entry in other nations; and

(C) the establishment of facilities in importing countries to improve the capacity of such countries for handling, marketing, processing, storing, or distributing fungible agricultural commodities produced in and exported from the United States (through the use of local currency generated from the sale of United States agricultural commodities).

(2) The Corporation shall use the revolving fund only to extend credit for purposes of market development and expansion and only where there is substantial potential for developing or enhancing regular commercial markets for United States agricultural commodities.

(3) The Secretary of Agriculture shall ensure that the revolving fund is used in such a manner as to involve equitable use of the funds to finance sales to the greatest feasible number of countries consistent with maximizing market opportunities. In carrying out this objective, the Secretary shall establish procedures under which—

(A) not less than 85 per centum of the estimated amount in the revolving fund for any fiscal year shall be made available for the purposes provided in clause (A) of paragraph (1) of this subsection; and

(B) not to exceed 25 per centum of the estimated amount in the revolving fund for any fiscal year shall be made available for the financing of credit sales to any one country for the purposes described in paragraph (1) of this subsection.

(4) There are authorized to be appropriated to the Agricultural Export Credit Revolving Fund such sums as may be necessary to carry out the provisions of this subsection. All funds received by the Corporation in payment for credit extended by the Corporation using the revolving fund, including interest or other receipts on investment and credit obligations, in financing export sales of the types specified in paragraph (1) of this subsection shall be added to and become a part of such revolving fund.

(5) The Secretary shall submit an annual report to Congress not later than December 1 of each year with respect to the use of the revolving fund in carrying out export credit sales by the Corporation in the previous fiscal year. Such report shall include, for the previous fiscal year, the names of the countries extended credit under this subsection, the total amount of such credit extended to

each such country, the names of the United States exporters that received any such credit, the total amount of credit provided to each such exporter stated separately for each commodity for which the credit was extended, and a discussion and evaluation of the market development and expansion activities of the Corporation under this subsection during such fiscal year. The first such report shall be submitted to Congress not later than December 1, 1982.

(6) The revolving fund created by this subsection is abolished effective October 1, 1990, and all unobligated money in such fund on September 30, 1990, shall be transferred to and become part of the miscellaneous receipts account of the Treasury.

(7) The authority provided under this subsection shall be in addition to, and not in lieu of, any authority granted to the Secretary or the Corporation under any other provision of law.

(8) The authority provided under this subsection to incur obligations to make loans shall be effective only to the extent that such obligations do not exceed annual limitations on new direct loan obligations which shall be provided in annual appropriations Acts.

Title II of Agriculture Trade Act of 1978

[7 U.S.C. 1707 b–d, P.L. 95–501]

COMMODITY CREDIT CORPORATION FINANCING OF DEFERRED PAYMENT SALES; CREDIT SALES TO THE PEOPLE'S REPUBLIC OF CHINA

SEC. 201. (a) To develop new market opportunities for the sale of United States agricultural commodities and to maintain and expand existing foreign markets for such commodities, the Secretary of Agriculture may provide Commodity Credit Corporation financing to exporters of such commodities who wish to provide deferred payment terms to buyers in other nations in order to meet sales competition from other nations or to make additional export sales. Except as otherwise provided in section 202 of this title, financing under this section shall be available only with respect to sales to those nations that are eligible for financing under the short-term export credit sales program conducted by the Commodity Credit Corporation.

(b) Exporters who are willing to sell United States agricultural commodities to foreign buyers on deferred payment terms of not to exceed three years and who must provide such deferred payment terms in order to meet sales competition from other nations, or to make additional export sales, may apply to the Commodity Credit Corporation for financing such sales. Financing under this section shall not be provided by the Corporation until the applicant's export sales plan has been approved by the Corporation and the applicant has established to the satisfaction of the Corporation that exports have been made in accordance with the approved plan.

(c) Repayment to the Commodity Credit Corporation shall be made in dollars by the exporter in accordance with the terms and at interest rates contained in the approved export sales plan. Interest rates on such financing shall be no higher than those charged for financing under the short-term export credit sales program conducted by the Corporation.

(d) The Secretary may, if the Secretary deems such action appropriate to protect the interest of the United States, require a performance guarantee from the exporter at the time of the sale.

(e) Financing agreements with exporters entered into under this section shall be subject to such other terms and conditions as the Secretary may deem necessary or appropriate and shall be subject only to review by the National Advisory Council on International Monetary and Financial Policies.

(f) The authority provided under this section shall be in addition to, and not in place of, any authority granted to the Secretary or the Commodity Credit Corporation under any other provision of law.

CREDIT SALES TO THE PEOPLE'S REPUBLIC OF CHINA

SEC. 202. Notwithstanding any other provision of law, in order to expand and develop markets for United States agricultural commodities, the Commodity Credit Corporation may provide financing for commercial sales of agricultural commodities out of private stocks on terms of not to exceed three years to the People's Republic of China under (1) the short-term export credit sales program conducted by the Corporation, and (2) the deferred payment sales program for exporters established under section 201 of this title.

DEFINITION

SEC. 203. The term "agricultural commodity" as used in this title includes any agricultural commodity or product thereof.

Section 1203 of Agriculture and Food Act of 1981

[7 U.S.C. 1736i, P.L. 97-98]

SPECIAL STANDBY EXPORT SUBSIDY PROGRAM

SEC. 1203. (a) In order to discourage foreign countries or instrumentalities thereof from using subsidies to promote the exportation of agricultural commodities, the Secretary of Agriculture shall formulate a special standby export subsidy program for agricultural commodities or products thereof produced in the United States. Such program shall be designed to neutralize the effects of export subsidy programs instituted by foreign countries or instrumentalities to encourage exports of their agricultural commodities to foreign markets other than the United States.

(b) The Secretary may implement the special standby export subsidy program formulated under subsection (a) of this section only after the President—

(1) makes a determination under section 301 of the Trade Act of 1974 (19 U.S.C. 2411) that action by the United States is appropriate to obtain the elimination of an act, policy, or practice of a foreign country or instrumentality that results in—

(A) substantial displacement of United States exports of agricultural commodities to foreign markets, or

(B) prices for agricultural commodities in foreign markets materially below prices which suppliers of the same agricultural commodities produced in the United States must charge in order to supply such commodities to the same markets;

(2) makes a determination that such act, policy, or practice of the foreign country or instrumentality concerned involves the use of export subsidies to encourage exports of such country's or instrumentality's agricultural commodities to foreign markets other than the United States; and

(3) fails to reach a mutually acceptable resolution through consultation with the foreign country or instrumentality concerned.

(c) The Secretary shall use the Commodity Credit Corporation in carrying out the special standby export subsidy program authorized by this section.

(d) Notwithstanding any other provision of this section, the Secretary shall not implement the special standby export subsidy program for cotton.

(e) The authority provided under this section shall be in addition to, and not in lieu of, any authority granted to the Secretary or the Commodity Credit Corporation by any other provision of law.

Food Security Act of 1985 [Excerpts]

[P.L. 99-198, as amended by P.L. 99-260]

AGRICULTURAL TRADE CONSULTATIONS

SEC. 1123. (a) To improve the orderly marketing of United States agricultural commodities, to achieve higher income for United States producers of agricultural commodities, and to reduce the likelihood of an agricultural commodity price war and the need for export subsidy programs, the Secretary of Agriculture shall, in coordination with the United States Trade Representative, confer with representatives of other major agricultural producing countries and, at the earliest possible date, initiate and pursue agricultural trade consultations among major agricultural producing countries.

(b) It is the sense of Congress that the objectives of the consultations called for in subsection (a) should be to—

(1) increase the exchange of information on worldwide agricultural production, demand, and commodity supply levels;

(2) determine a more equitable sharing of responsibility for maintaining agricultural commodity reserves and managing supplies of agricultural commodities; and

(3) attain increased cooperation in restraining export subsidy programs.

(c) The Secretary of Agriculture shall report to Congress by July 1, 1986, and annually thereafter through fiscal year 1990, on the progress of efforts to initiate and pursue the consultations called for in subsection (a), including any agreements reached with respect to the objectives set forth in subsection (b).

TARGETED EXPORT ASSISTANCE

SEC. 1124. (a) For export activities authorized to be carried out by the Secretary of Agriculture or the Commodity Credit Corporation, in addition to any funds or commodities otherwise required under this Act to be used for such activities—

(1) for each of the fiscal years ending September 30, 1986, through September 30, 1988, the Secretary shall use under this section not less than $110,000,000 of funds of, or commodities owned by, the Corporation; and

(2) for each of the fiscal years ending September 30, 1989, and September 30, 1990, the Secretary shall use under this section not less than $325,000,000 of funds of, or commodities owned by, the Corporation.

(b)(1) Funds or commodities made available for use under this section shall be used by the Secretary only to counter or offset the adverse effect on the export of a United States agricultural commodity or the product thereof of a subsidy (as defined in paragraph (2)), import quotas, or other unfair trade practices of a foreign country.

(2) As used in paragraph (1), the term subsidy includes an export subsidy, tax rebate on exports, financial assistance on preferential terms, financial assistance for operating losses, assumption of costs or expenses of production, processing, or distribution, a differential export tax or duty exemption, a domestic consumption quota, or other method of furnishing or ensuring the availability of raw materials at artifically low prices.

(c) The Secretary shall provide export assistance under this section on a priority basis in the case of—

(1) agricultural commodities and the products thereof with respect to which there has been a favorable decision under section 301 of the Trade Act of 1974 (19 U.S.C. 2411); or

(2) agricultural commodities and the products thereof for which exports have been adversely affected, as defined by the Secretary, by retaliatory actions related to a favorable decision under section 301 of the Trade Act of 1974 (19 U.S.C. 2411).

SHORT-TERM EXPORT CREDIT

SEC. 1125. (a) In making available any guarantees of the repayment of credit extended on terms of up to 3 years in connection with the export sale of United States agricultural commodities or the products thereof, the Commodity Credit Corporation shall take into account—

(1) the credit needs of countries that are potential purchasers of United States agricultural exports;

(2) the creditworthiness of such countries; and

(3) whether the availability of Commodity Credit Corporation guarantees will improve the competitive position of United States agricultural exports in world markets.

(b) Effective for the fiscal year ending September 30, 1986 and each fiscal year thereafter through the fiscal year ending September 30, 1990, the Commodity Credit Corporation shall make available not less than $5,000,000,000 in credit guarantees under its export credit guarantee program for short-term credit extended to finance the export sales of United States agricultural commodities and the products thereof.

(c) Notwithstanding any other provision of law, the Secretary of Agriculture may not charge an origination fee with respect to any credit guarantee transaction under the Export Credit Guarantee Program (GSM—102) in excess of an amount equal to one percent of the credit extended under the transaction.

DEVELOPMENT AND EXPANSION OF MARKETS FOR UNITED STATES AGRICULTURAL COMMODITIES

SEC. 1127. (a)(1) Notwithstanding any other provision of law, the Secretary of Agriculture (hereafter in this section referred to as the "Secretary") shall formulate and carry out a program under which agricultural commodities and the products thereof acquired by the Commodity Credit Corporation are provided to United States exporters, users, and processors and foreign purchasers at no cost to encourage the development, maintenance, and expansion of export markets for United States agricultural commodities and the products thereof, including value-added or high-value agricultural products produced in the United States.

(2)(A) The term "agricultural commodities", as used in this section in referring to United States agricultural commodities, includes, but is not limited to—

(i) wheat, feed grains, upland cotton, rice, soybeans, and dairy products produced in the United States;

(ii) any other agricultural commodity produced in the United States that is determined by the Secretary of Agriculture to be in surplus supply and that can be purchased with funds available under section 32 of the Act entitled "An Act to amend the Agricultural Adjustment Act, and for other purposes", approved August 24, 1935; and

(iii) products of the commodities and products described in clauses (i) and (ii) that are processed in the United States.

(B) United States agricultural commodities, as described in clause (ii) of subparagraph (A), may not be purchased with funds available under section 32 of the Act entitled "An Act to amend the Agricultural Adjustment Act, and for other purposes", approved August 24, 1935, for the sole purpose of use under the program under this section; and such commodities, or products thereof, may not be furnished to a United States user, exporter, processor, or foreign purchaser under the program under this section except by mutual agreement of such user, exporter, processor, or purchaser and the Secretary.

(3) In carrying out paragraph (1), the Secretary may provide such commodities in order to make United States commodities more competitive and shall, to the extent necessary, provide such commodities and products—

(A) to counter or offset—

(i) the adverse effect on the export of a United States agricultural commodity or the product thereof of a subsidy (as defined in paragraph (4) or other unfair trade practice of a foreign country that directly or indirectly benefits producers, processors, or exporters of agricultural commodities in such foreign country;

(ii) the adverse effects of United States agricultural price support levels that are temporarily above the export prices offered by overseas competitors in export markets; or

(iii) fluctuations in the exchange rate of the United States dollar against other major currencies; and

(B) in conjunction with an intermediate export credit program conducted by the Commodity Credit Corporation—

(i) for the export sale of breeding animals (including, but not limited to, cattle, swine, sheep, and poultry), including the cost of freight from the United States to designated points of entry in other nations; and

(ii) for the establishment of facilities in the importing nation to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities (through the use of local currency generated from the import and sale of United States agricultural commodities or the products thereof to finance all or part of such facilities).

(4) As used in paragraph (3)(A)(i), the term "subsidy" includes an export subsidy, tax rebate on exports, financial assistance on preferential terms, financial assistance for operating losses, assumption of costs or expenses of production, processing, or distribution, a differential export tax or duty exemption, a domestic consumption quota, or other method of furnishing or ensuring the availability of raw materials at artificially low prices.

(b) In carrying out the program established by this section, the Secretary of Agriculture—

(1) shall take such action as may be necessary to ensure that the program provides equal treatment to domestic and foreign purchasers and users of United States agricultural commodities and the products thereof in any case in which the importation of a manufactured product made, in whole or in part, from a commodity or the product thereof made available for export under this section would place domestic users of the commodity or the product thereof at a competitive disadvantage;

(2) shall, to the extent that agricultural commodities and the products thereof are to be provided to foreign purchasers during any fiscal year, consider for participation all interested foreign purchasers, giving priority to those who have traditionally purchased United States agricultural commodities and the products thereof and who continue to purchase such commodities and the products thereof on an annual basis in quantities greater than the level of purchases in a previous representative period;

(3) shall encourage increased use and avoid displacing usual marketings of United States agricultural commodities and the products thereof;

(4) shall take reasonable precautions to prevent the resale or transshipment to other countries, or use for other than domestic use in the importing country, of agricultural commodities or the products thereof the export of which is assisted under this section; and

(5) may provide to a United States exporter, user, processor, or foreign purchaser, under the program, agricultural commodities of a kind different than the agricultural commodity involved in the transaction for which assistance under this section is being provided.

(c)(1) If a country does not meet the financial qualifications for export credit or credit guarantees provided by the Commodity Credit Corporation, the Secretary may provide to such country agricultural commodities and the products thereof acquired by the Corporation to the extent necessary to reduce the cost to such country of purchasing United States agricultural commodities and to allow such country to meet such qualifications.

(2) The Secretary shall review and adjust annually the quantity of commodities provided to a country under paragraph (1) in order to encourage such country to place greater reliance on increased use of commercial trade to meet the qualifications referred to in paragraph (1).

(d)(1) In carrying out this section, the Secretary may make green dollar export certificates available to commercial exporters of United States agricultural commodities and the products thereof.

(2) The Secretary shall make such certificates available under such terms and conditions as the Secretary determines appropriate.

(3) The amount of such certificates to be made available to an exporter may be determined—

(A) on the basis of competitive bids submitted by exporters; or

(B) by announcement of the Secretary.

(4)(A) An exporter may redeem a green dollar export certificate for commodities owned by the Commodity Credit Corporation.

(B) For purposes of redeeming such certificates, the Secretary may establish values for such commodities that are different than the acquisition prices of such commodities.

(5) Such certificates—

(A) may be transferred among commercial exporters of United States agricultural commodities; and

(B) shall be redeemed within 6 months after the date of issuance.

(e) The Secretary of Agriculture shall carry out the program established by this section through the Commodity Credit Corporation.

(f) Any price restrictions that otherwise may be applicable to dispositions of agricultural commodities owned by the Commodity Credit Corporation shall not apply to agricultural commodities provided under this section.

(g) The program established under this section shall be in addition to, and not in place of, any authority granted to the Secretary of Agriculture or Commodity Credit Corporation under any other provision of law.

(h) The authority provided under this section shall terminate on September 30, 1990.

(i) During the period beginning October 1, 1985, and ending September 30, 1988, the Secretary shall use agricultural commodities and the products thereof referred to in subsection (a) to carry out this section, except that the value of the commodities and products may not be less than $1,000,000,000, nor more than $1,500,000,000. To the maximum extent practicable, such commodities shall be used in equal amounts during each of the years in such period.

POULTRY, BEEF AND PORK MEATS AND MEAT-FOOD PRODUCTS, EQUITABLE TREATMENT

SEC. 1128. In the case of any program operated by the Secretary of Agriculture during the years 1986 through 1989, for the purpose of encouraging or enhancing commercial sales in foreign export markets of agricultural products or commodities produced in the United States, which program includes the payment of bonus or incentive (in cash, commodities, or other benefits) provided to the purchaser, the Secretary shall seek to expend annually at least 15 per centum of the total funds available (or 15 per centum of the value of any commodities employed to encourage such sales) for program activities to likewise encourage and enhance the export sales of poultry, beef or pork meat and meat products.

AGRICULTURAL ATTACHE REPORTS

SEC. 1132. (a) The Secretary of Agriculture shall require appropriate officers and employees of the Department of Agriculture, including those stationed in foreign countries, to prepare and submit annually to the Secretary detailed reports that—

(1) document the nature and extent of—

(A) programs in such countries that provide direct or indirect government support for the export of agricultural commodities and the products thereof, and

(B) other trade practices that may impede the entry of United States agricultural commodities and the products thereof into such countries; and

(2) identify opportunities for the export of United States agricultural commodities and the products thereof to such countries.

(b) The Secretary shall annually compile the information contained in such reports and make such information available to Congress, the Agricultural Policy Advisory Committee and the agricultural technical advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155), and other interested parties.

(c) The United States Trade Representative shall—

(1) review the reports prepared under subsection (a) and any other information available to identify export subsidies or other export enhancing techniques (within the meaning of the agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade);

(2) identify markets (in order of priority) in which United States export subsidies can be used most efficiently and will have the greatest impact in offsetting the benefits of foreign export subsidies that—

(A) harm United States exports,

(B) are inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade,

(C) nullify or impair benefits accruing to the United States under international agreements, or

(D) cause serious prejudice to the interests of the United States and

(3) submit to the Congress and to the Secretary of Agriculture an annual report on—

(A) the existence and status of export subsidies and other export enhancing techniques that are the subject of the investigation conducted under paragraph (1), and

(B) the identification and assignment of priority to markets under paragraph (2).

(d) The Secretary and the United States Trade Representative shall convene a meeting, at least once a year, of the Agricultural Policy Advisory Committee and the agricultural technical advisory committees to develop specific recommendations for actions to be taken by the Federal Government and private industry to—

(1) reduce or eliminate trade barriers or distortions identified in the annual reports required to be submitted under subsections (a) and (c); and

(2) expand United States agricultural export opportunities identified in such annual reports.

Chapter 12: AUTHORITIES RELATING TO POLITICAL OR ECONOMIC SECURITY

A. International Emergency Economic Powers Act

[50 U.S.C. 1701, P.L. 95-223, title II]

SHORT TITLE

SEC. 201. This title may be cited as the "International Emergency Economic Powers Act".

SITUATIONS IN WHICH AUTHORITIES MAY BE EXERCISED

SEC. 202. (a) Any authority granted to the President by section 203 may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

(b) The authorities granted to the President by section 203 may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this title and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

GRANT OF AUTHORITIES

SEC. 203. (a)(1) At the times and to the extent specified in section 202, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit—

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities; and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest;

by any person, or with respect to any property, subject to the jurisdiction of the United States.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this title shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this title, or any regulation, instruction, or direction issued under this title.

(b) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly—

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value; or

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 202 of this title, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances.

CONSULTATION AND REPORTS

SEC. 204. (a) The President, in every possible instance, shall consult with the Congress before exercising any of the authorities granted by this title and shall consult regularly with the Congress so long as such authorities are exercised.

(b) Whenever the President exercises any of the authorities granted by this title, he shall immediately transmit to the Congress a report specifying—

(1) the circumstances which necessitate such exercise of authority;

(2) why the President believes those circumstances constitute an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States;

(3) the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances;

(4) why the President believes such actions are necessary to deal with those circumstances; and

(5) any foreign countries with respect to which such actions are to be taken and why such actions are to be taken with respect to those countries.

(c) At least once during each succeeding six-month period after transmitting a report pursuant to subsection (b) with respect to an exercise of authorities under this title, the President shall report to the Congress with respect to the actions taken, since the last such report, in the exercise of such authorities, and with respect to any changes which have occurred concerning any information previously furnished pursuant to paragraphs (1) through (5) of subsection (b).

(d) The requirements of this section are supplemental to those contained in title IV of the National Emergencies Act.

AUTHORITY TO ISSUE REGULATIONS

SEC. 205. The President may issue such regulations, including regulations prescribing definitions, as may be necessary for the exercise of the authorities granted by this title.

PENALTIES

SEC. 206. (a) A civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under this title.

(b) Whoever willfully violates any license, order, or regulation issued under this title shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

SAVINGS PROVISION

SEC. 207. (a)(1) Except as provided in subsection (b), notwithstanding the termination pursuant to the National Emergencies Act of a national emergency declared for purposes of this title, any authorities granted by this title, which are exercised on the date of such termination on the basis of such national emergency to prohibit transactions involving property in which a foreign country or national thereof has any interest, may continue to be so exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(2) Notwithstanding the termination of the authorities described in section 101(b) of this Act, any such authorities, which are exercised with respect to a country on the date of such termination to prohibit transactions involving any property in which such country or any national thereof has any interest, may continue to be exer-

cised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(b) The authorities described in subsection (a)(1) may not continue to be exercised under this section if the national emergency is terminated by the Congress by concurrent resolution pursuant to section 202 of the National Emergencies Act and if the Congress specifies in such concurrent resolution that such authorities may not continue to be exercised under this section.

(c)(1) The provisions of this section are supplemental to the savings provisions of paragraphs (1), (2), and (3) of section 101(a) and of paragraphs (A), (B), and (C) of section 202(a) of the National Emergencies Act.

(2) The provisions of this section superseded the termination provisions of section 101(a) and of title II of the National Emergencies Act to the extent that the provisions of this section are inconsistent with these provisions.

(d) If the President uses the authority of this section to continue prohibitions on transactions involving foreign property interests, he shall report to the Congress every six months on the use of such authority.

SEC. 208. If any provision of this Act is held invalid, the remainder of the Act shall not be affected thereby.

B. Trading With the Enemy Act of 1917

Section 5(b), as amended

[50 U.S.C. App. 5, P.L. 65-91, as amended by P.L. 65-217, P.L. 73-1, Public Resolution 76-69, P.L. 77-354, and P.L. 95-223]

SEC. 5. (b)(1) During the time of war the President may, through any agency that he may designate, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof: *Provided, however,* That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. As used in this subdivision the term "person" means an individual, partnership, association, or corporation.

Section 101(b) of Public Law 95–223

[50 U.S.C. App. 5(b) note]

REMOVAL OF NATIONAL EMERGENCY POWERS UNDER THE TRADING WITH THE ENEMY ACT

SEC. 101. (b) Notwithstanding the amendment made by subsection (a), the authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act, which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, may continue to be exercised with respect to such country, except that, unless extended, the exercise of such authorities shall terminate (subject to the savings provisions of the second sentence of section 101(a) of the National Emergencies Act) at the end of the two-year period beginning on the date of enactment of the National Emergencies Act. The President may extend the exercise of such authorities for one-year periods upon a determination of each such extension that the exercise of such authorities with respect to such country for another year is in the national interest of the United States.

C. Denial of Trade Benefits to Uncooperative Major Drug Producing or Drug-Transit Countries

Title VIII of the Trade Act of 1974, As Added by Title IX of the Drug Enforcement, Education, and Control Act of 1986

[P.L. 99-570]

TITLE VIII—TARIFF TREATMENT OF PRODUCTS OF UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES

SEC. 801. SHORT TITLE.

This title may be cited as the "Narcotics Control Trade Act".

SEC. 802. TARIFF TREATMENT OF PRODUCTS OF UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES.

(a) Required Action by President.—Subject to subsection (b), for every major drug producing country and every major drug-transit country, the President shall, on or after March 1, 1987, and March 1 of each succeeding year, to the extent considered necessary by the President to achieve the purposes of this title—

(1) deny to any or all of the products of that country tariff treatment under the Generalized System of Preferences, the Caribbean Basin Economic Recovery Act, or any other law providing preferential tariff treatment;

(2) apply to any or all of the dutiable products of that country an additional duty at a rate not to exceed 50 percent ad valorem or the specific rate equivalent;

(3) apply to one or more duty-free products of that country a duty at a rate not to exceed 50 percent ad valorem; or

(4) take any combination of the actions described in paragraphs (1), (2), and (3).

(b) Certifications; Congressional Action.—(1) Subsection (a) shall not apply with respect to a country if the President determines and so certifies to the Congress, at the time of the submission of the report required by section 481(e) of the Foreign Assistance Act of 1961, that during the previous year that country has cooperated fully with the United States, or has taken adequate steps on its own, in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States and in preventing and punishing the laundering in that country of drug-related profits or drug-related monies.

(2) In making the certification required by paragraph (1), the President shall give foremost consideration to whether the actions of the government of the country have resulted in the maximum

reductions in illicit drug production which were determined to be achievable pursuant to section 481(e)(4) of the Foreign Assistance Act of 1961. The President shall also consider whether such government—

(A) has taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States; and

(B) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related monies, as evidence by—

(i) the enactment and enforcement of laws prohibiting such conduct,

(ii) the willingness of such government to enter into mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

(iii) the degree to which such government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts.

(3) Subsection (a) shall apply to a country without regard to paragraph (1) of this subsection if the Congress enacts, within 30 days of continuous session after receipt of a certification under paragraph (1), a joint resolution disapproving the determination of the President contained in that certification.

(4) If the President takes action under subsection (a), that action shall remain in effect until—

(A) the President makes the certification under paragraph (1), a period of 30 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproval; or

(B) the President submits at any other time a certification of the matters described in paragraph (1) with respect to that country, a period of 30 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution disapproving the determination contained in that certification.

(5) For the purpose of expediting the consideration and enactment of joint resolutions under paragraphs (3) and (4)—

(A) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Ways and Means shall be treated as highly privileged in the House of Representatives; and

(B) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Finance shall be treated as privileged in the Senate.

(c) DURATION OF ACTION.—The action taken by the President under subsection (a) shall apply to the products of a foreign country that are entered, or withdrawn from warehouse for consumption, during the period that such action is in effect.

SEC. 803. SUGAR QUOTA.

Notwithstanding any other provision of law, the President may not allocate any limitation imposed on the quantity of sugar to any country which has a Government involved in the trade of illicit narcotics or is failing to cooperate with the United States in narcotics enforcement activities as defined in section 802(b) as determined by the President.

SEC. 804. PROGRESS REPORTS.

The President shall include as a part of the annual report required under section 481(e)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e)(1)) an evaluation of progress that each major drug producing country and each major drug-transit country has made during the reporting period in achieving the objectives set forth in section 802(b).

SEC. 805. DEFINITIONS.

For purposes of this title—

(1) continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated;

(2) the term "major drug producing country" means a country producing five metric tons or more of opium or opium derivative during a fiscal year or producing five hundred metric tons or more of coca or marijuana (as the case may be) during a fiscal year; and

(3) the term "major drug-transit country" means a country—

(A) that is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States;

(B) through which are transported such drugs or substances; or

(C) through which significant sums of drug-related profits or monies are laundered with the knowledge or complicity of the government; and

(4) the term "narcotic and psychotropic drugs and other controlled substances" has the same meaning as is given by any applicable international narcotics control agreement or domestic law of the country or countries concerned.

D. Embargo on Trade With Cuba

Section 620(a) of Foreign Assistance Act of 1961, as amended

[22 U.S.C. 2370, P.L. 87-195, as amended by Foreign Assistance Acts of 1963, 1965, and P.L. 95-88]

SEC. 620. PROHIBITIONS AGAINST FURNISHING ASSISTANCE.—(a)(1) No assistance shall be furnished under this Act to the present government of Cuba. As an additional means of implementing and carrying into effect the policy of the preceding sentence, the President is authorized to establish and maintain a total embargo upon all trade between the United States and Cuba.

(2) Except as may be deemed necessary by the President in the interest of the United States, no assistance shall be furnished under this Act of any government of Cuba, nor shall Cuba be entitled to receive any quota authorizing the importation of Cuban sugar into the United States or to receive any other benefit under any law of the United States, until the President determines that such government has taken appropriate steps according to international law standards to return to United States citizens, and to entities not less than 50 per centum beneficially owned by United States citizens, or to provide equitable compensation to such citizens and entities for property taken from such citizens and entities on or after January 1, 1959, by the Government of Cuba.

E. Economic Sanctions Against South Africa

Comprehensive Anti-Apartheid Act of 1986 [Excerpts]

[22 USC 5001, P.L. 99-440, as amended by P.L. 99-631]

AN ACT To prohibit loans to, other investments in, and certain activities with respect to, South Africa, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Comprehensive Anti-Apartheid Act of 1986".

[SEC. 2. TABLE OF CONTENTS]

DEFINITIONS

SEC. 3. As used in this Act—

(1) the term "Code of Conduct" refers to the principles set forth in section 208(a);

(2) the term "controlled South African entity" means—

(A) a corporation, partnership, or other business association or entity organized in South Africa and owned or controlled, directly or indirectly, by a national of the United States; or

(B) a branch, office, agency or sole proprietorship in South Africa of a national of the United States;

(3) the term "loan"—

(A) means any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another to repay an extension of funds or credit, including—

(i) overdrafts,

(ii) currency swaps,

(iii) the purchase of debt or equity securities issued by the Government of South Africa or a South African entity on or after the date of enactment of this Act,

(iv) the purchase of a loan made by another person,

(v) the sale of financial assets subject to an agreement to repurchase, and

(vi) a renewal or refinancing whereby funds or credits are transferred or extended to the Government of South Africa or a South African entity, and

(B) does not include—

(i) normal short-term trade, financing, as by letters of credit or similar trade credits;

(ii) sales on open account in cases where such sales are normal business practice; or

(iii) rescheduling of existing loans, if no new funds or credits are thereby extended to a South African entity or the Government of South Africa;

(4) the term "new investment"—

(A) means—

(i) a commitment or contribution of funds or other assets, and

(ii) a loan or other extension of credit, and

(B) does not include—

(i) the reinvestment of profits generated by a controlled South African entity into that same controlled South African entity or the investment of such profits in a South African entity;

(ii) contributions of money or other assets where such contributions are necessary to enable a controlled South African entity to operate in an economically sound manner, without expanding its operations; or

(iii) the ownership or control of a share or interest in a South African entity or a controlled South African entity or a debt or equity security issued by the Government of South Africa or a South African entity before the date of enactment of this Act, or the transfer or acquisition of such a share, interest, or debt or equity security, if any such transfer or acquisition does not result in a payment, contribution of funds or assets, or credit to a South African entity, a controlled South African entity, or the Government of South Africa;

(5) the term "national of the United States" means—

(A) a natural person who is a citizen of the United States or who owes permanent allegiance to the United States or is an alien lawfully admitted for permanent residence in the United States, as defined by section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); or

(B) a corporation, partnership, or other business association which is organized under the laws of the United States, any State or territory thereof, or the District of Columbia;

(6) the term "South Africa" includes—

(A) the Republic of South Africa;

(B) any territory under the administration, legal or illegal, of South Africa; and

(C) the "bantustans" or "homelands", to which South African blacks are assigned on the basis of ethnic origin, including the Transkei, Bophuthatswana Ciskei, and Venda; and

(7) the term "South African entity" means—

(A) a corporation, partnership, or other business association or entity organized in South Africa; or

(B) a branch, office, agency, or sole proprietorship in South Africa of a person that resides or is organized outside South Africa;

(8) the term "South African national" means—

(A) a citizen of South Africa; and

(B) any partnership, corporation, or other business association which is organized under the laws of South Africa; and

(9) the term "United States" includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

PURPOSE

SEC. 4. The purpose of this Act is to set forth a comprehensive and complete framework to guide the efforts of the United States in helping to bring an end to apartheid in South Africa and lead to the establishment of a nonracial, democratic form of government. This Act sets out United States policy toward the Government of South Africa, the victims of apartheid, and the other states in southern Africa. It also provides the President with additional authority to work with the other industrial democracies to help end apartheid and establish democracy in South Africa.

[TITLE I—POLICY OF THE UNITED STATES WITH RESPECT TO ENDING APARTHEID]

[TITLE II—MEASURES TO ASSIST VICTIMS OF APARTHEID]

TITLE III—MEASURES BY THE UNITED STATES TO UNDERMINE APARTHEID

PROHIBITION ON THE IMPORTATION OF KRUGERRANDS

SEC. 301. No person, including a bank, may import into the United States any South African krugerrand or any other gold coin minted in South Africa or offered for sale by the Government of South Africa.

PROHIBITION ON THE IMPORTATION OF MILITARY ARTICLES

SEC. 302. No arms, ammunition, or military vehicles produced in South Africa or any manufacturing data for such articles may be imported into the United States.

PROHIBITION ON THE IMPORTATION OF PRODUCTS FROM PARASTATAL ORGANIZATIONS

SEC. 303. (a) Notwithstanding any other provision of law, no article which is grown, produced, manufactured by, marketed, or otherwise exported by a parastatal organization of South Africa may be imported into the United States, (1) except for agricultural products during the 12-month period from the date of enactment; and (2) except for those strategic minerals for which the President has certified to the Congress that the quantities essential for the economy or defense of the United States are unavailable from reliable and secure suppliers and except for any article to be imported pursuant to a contract entered into before August 15, 1986: *Provided*, That no shipments may be received by a national of the United States under such contract after April 1, 1987.

(b) For purposes of this section, the term "parastatal organization" means a corporation, partnership, or entity owned, controlled, or subsidized by the Government of South Africa, but does not mean a corporation, partnership, or entity which previously received start-up assistance from the South African Industrial Development Corporation but which is now privately owned.

(c) Nothing in this section prohibits the importation into the United States of any publication, including any book, newspaper, magazine, film, phonograph record, tape recording, photograph, microfilm, microfiche, poster, or any other similar material.

PROHIBITION ON COMPUTER EXPORTS TO SOUTH AFRICA

SEC. 304. (a) No computers, computer software, or goods or technology intended to manufacture or service computers may be exported to or for use by any of the following entities of the Government of South Africa:

(1) The military.

(2) The police.

(3) The prison system.

(4) The national security agencies.

(5) ARMSCOR and its subsidiaries or the weapons research activities of the Council for Scientific and Industrial Research.

(6) The administering authorities for controlling the movements of the victims of apartheid.

(7) Any apartheid enforcing agency.

(8) Any local, regional, or homelands government entity which performs any function of any entity described in paragraphs (1) through (7).

(b)(1) Computers, computer software, and goods or technology intended to service computers may be exported, directly or indirectly, to or for use by an entity of the Government of South Africa other than those set forth in subsection (a) only if a system of end use verification is in effect to ensure that the computers involved will not be used for any function of any entity set forth in subsection (a).

(2) The Secretary of Commerce may prescribe such rules and regulations as may be necessary to carry out this section.

PROHIBITION ON LOANS TO THE GOVERNMENT OF SOUTH AFRICA

SEC. 305. (a) No national of the United States may make or approve any loan or other extension of credit, directly or indirectly, to the Government of South Africa or to any corporation, partnership or other organization which is owned or controlled by the Government of South Africa.

(b) The prohibition contained in subsection (a) shall not apply to—

(1) a loan or extension of credit for any education, housing, or humanitarian benefit which—

(A) is available to all persons on a nondiscriminatory basis; or

(B) is available in a geographic area accessible to all population groups without any legal or administrative restriction; or

(2) a loan or extension of credit for which an agreement is entered into before the date of enactment of this Act.

PROHIBITION ON AIR TRANSPORTATION WITH SOUTH AFRICA

SEC. 306. (a)(1) The President shall immediately notify the Government of South Africa of his intention to suspend the rights of any air carrier designated by the Government of South Africa under the Agreement Between the Government of the United States of America and the Government of the Union of South Africa Relating to Air Services Between Their Respective Territories, signed May 23, 1947, to service the routes provided in the Agreement.

(2) Ten days after the date of enactment of this Act, the President shall direct the Secretary of Transportation to revoke the right of any air carrier designated by the Government of South Africa under the Agreement to provide service pursuant to the Agreement.

(3) Ten days after the date of enactment of this Act, the President shall direct the Secretary of Transportation not to permit or otherwise designate any United States air carrier to provide service between the United States and South Africa pursuant to the Agreement.

(b)(1) The Secretary of State shall terminate the Agreement Between the Government of the United States of America and the Government of the Union of South Africa Relating to Air Services Between Their Respective Territories, signed May 23, 1947, in accordance with the provisions of that agreement.

(2) Upon termination of such agreement, the Secretary of Transportation shall prohibit any aircraft of a foreign air carrier owned, directly or indirectly, by the Government of South Africa or by South African nationals from engaging in air transportation with respect to the United States.

(3) The Secretary of Transportation shall prohibit the takeoff and landing in South Africa of any aircraft by an air carrier owned, directly or indirectly, or controlled by a national of the United States or by any corporation or other entity organized under the laws of the United States or of any State.

(c) The Secretary of Transportation may provide for such exceptions from the prohibition contained in subsection (a) or (b) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers is threatened.

(d) For purposes of this section, the terms "aircraft," "air carrier," "air transportation", and "foreign air carrier" have the meanings given those terms in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301).

PROHIBITIONS ON NUCLEAR TRADE WITH SOUTH AFRICA

SEC. 307. (a) Notwithstanding any other provision of law—

(1) the Nuclear Regulatory Commission shall not issue any license for the export to South Africa of production or utilization facilities, any source or special nuclear material or sensitive nuclear technology, or any component parts, items, or substances which the Commission has determined, pursuant to section 109b. of the Atomic Energy Act, to be especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes;

(2) the Secretary of Commerce shall not issue any license for the export to South Africa of any goods or technology which have been determined, pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978, to be of significance for nuclear explosive purposes for use in, or judged by the President to be likely to be diverted to, a South African production or utilization facility;

(3) the Secretary of Energy shall not, under section 57b.(2) of the Atomic Energy Act, authorize any person to engage, directly or indirectly, in the production of special nuclear material in South Africa; and

(4) no goods, technology, source or special nuclear material, facilities, components, items, or substances referred to in clauses (1) through (3) shall be approved by the Nuclear Regulatory Commission or an executive branch agency for retransfer to South Africa,

unless the Secretary of State determines and certifies to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate that the Government of South Africa is a party to the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow on July 1, 1968, or otherwise maintains International Atomic Energy Agency safeguards on all its peaceful nuclear activities, as defined in the Nuclear Non-Proliferation Act of 1978.

(b) Nothing in this section shall preclude—

(1) any export, retransfer, or activity generally licensed or generally authorized by the Nuclear Regulatory Commission or the Department of Commerce or the Department of Energy; or

(2) assistance for the purpose of developing or applying International Atomic Energy Agency or United States bilateral safeguards, for International Atomic Energy Agency programs generally available to its member states, for reducing the use of highly enriched uranium in research or test reactors, or for other technical programs for the purpose of reducing prolifera-

tion risks, such as programs to extend the life of reactor fuel and activities envisaged by section 223 of the Nuclear Waste Policy Act of 1982 or which are necessary for humanitarian reasons to protect the public health and safety.

(c) The prohibitions contained in subsection (a) shall not apply with respect to a particular export, retransfer, or activity, or a group of exports, retransfers, or activities, if the President determines that to apply the prohibitions would be seriously prejudicial to the achievement of United States nonproliferation objectives or would otherwise jeopardize the common defense and security of the United States and, if at least 60 days before the initial export, retransfer, or activity is carried out, the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report setting forth that determination, together with his reasons therefor.

GOVERNMENT OF SOUTH AFRICA BANK ACCOUNTS

SEC. 308. (a) A United States depository institution may not accept, receive, or hold a deposit account from the Government of South Africa or from any agency or entity owned or controlled by the Government of South Africa except for such accounts which may be authorized by the President for diplomatic or consular purposes. For purposes of the preceding sentence, the term "depository institution" has the same meaning as in section 19(b)(1) of the Federal Reserve Act.

(b) The prohibition contained in subsection (a) shall take effect 45 days after the date of enactment of this Act.

PROHIBITION ON IMPORTATION OF URANIUM, COAL, AND TEXTILES FROM SOUTH AFRICA

SEC. 309. (a) Notwithstanding any other provision of law, no—

(1) uranium ore,
(2) uranium oxide,
(3) coal, or
(4) textiles,

that are produced or manufactured in South Africa may be imported into the United States.

(b) For purposes of this section, the term "textiles" does not include any article provided for in item 812.10 or 813.10 of the Tariff Schedules of the United States.

(c) This section shall take effect 90 days after the date of enactment of this Act.

PROHIBITION ON NEW INVESTMENT IN SOUTH AFRICA

SEC. 310. (a) No national of the United States may, directly or through another person, make any new investment in South Africa.

(b) The prohibition contained in subsection (a) shall take effect 45 days after the date of enactment of this Act.

(c) The prohibition contained in this section shall not apply to a firm owned by black South Africans.

TERMINATION OF CERTAIN PROVISIONS

Sec. 311. (a) This title and sections 501(c) and 504(b) shall terminate if the Government of South Africa—

(1) releases all persons persecuted for their political beliefs or detained unduly without trial and Nelson Mandela from prison;

(2) repeals the state of emergency in effect on the date of enactment of this Act and releases all detainees held under such state of emergency;

(3) unbans democratic political parties and permits the free exercise by South Africans of all races of the right to form political parties, express political opinions, and otherwise participate in the political process;

(4) repeals the Group Areas Act and the Population Registration Act and institutes no other measures with the same purposes; and

(5) agrees to enter into good faith negotiations with truly representative members of the black majority without preconditions.

(b) The President may suspend or modify any of the measures required by this title or section 501(c) or section 504(b) thirty days after he determines, and so reports to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, that the Government of South Africa has—

(1) taken the action described in paragraph (1) of subsection (a),

(2) taken three of the four actions listed in paragraphs (2) through (5) of subsection (a), and

(3) made substantial progress toward dismantling the system of apartheid and establishing a nonracial democracy,

unless the Congress enacts within such 30-day period, in accordance with section 602 of this Act, a joint resolution disapproving the determination of the President under this subsection.

(c) It is the policy of the United States to support the negotiations with the representatives of all communities as envisioned in this Act. If the South African Government agrees to enter into negotiations without preconditions, abandons unprovoked violence against its opponents, commits itself to a free and democratic post-apartheid South Africa under a code of law; and if nonetheless the African National Congress, the Pan African Congress, or their affiliates, or other organizations, refuse to participate; or if the African National Congress, the Pan African Congress or other organizations—

(1) refuse to abandon unprovoked violence during such negotiations; and

(2) refuse to commit themselves to a free and democratic post-apartheid South Africa under a code of law,

then the United States will support negotiations which do not include these organizations.

[SEC. 312. POLICY TOWARD VIOLENCE OR TERRORISM]

TERMINATION OF TAX TREATY AND PROTOCOL

SEC. 313. The Secretary of State shall terminate immediately, in accordance with its terms, the Convention Between the Government of the United States of America and the Government of the Union of South Africa for the Avoidance of Double Taxation and for Establishing Rules of Reciprocal Administrative Assistance With Respect to Taxes on Income, done at Pretoria on December 13, 1946, and the protocol relating thereto.

PROHIBITION ON UNITED STATES GOVERNMENT PROCUREMENT FROM SOUTH AFRICA

SEC. 314. On or after the date of enactment of this Act, no department, agency, or any other entity of the United States Government may enter into a contract for the procurement of goods or services from parastatal organizations except for items necessary for diplomatic or consular purposes.

PROHIBITION ON THE PROMOTION OF UNITED STATES TOURISM IN SOUTH AFRICA

SEC. 315. None of the funds appropriated or otherwise made available by any provision of law may be available to promote United States tourism in South Africa.

PROHIBITION ON UNITED STATES GOVERNMENT ASSISTANCE TO, INVESTMENT IN, OR SUBSIDY FOR TRADE WITH, SOUTH AFRICA

SEC. 316. None of the funds appropriated or otherwise made available by any provision of law may be available for any assistance to investment in, or any subsidy for trade with, South Africa, including but not limited to funding for trade missions in South Africa and for participation in exhibitions and trade fairs in South Africa.

PROHIBITION ON EXPORT OF ITEMS ON THE UNITED STATES MUNITIONS LIST

SEC. 317. (a) Except as provided in subsection (b), no item contained on the United States Munitions List which is subject to the jurisdiction of the United States may be exported to South Africa.

(b) Subsection (a) does not apply to any item which is not covered by the United Nations Security Council Resolution 418 of November 4, 1977, and which the President determines is exported solely for commercial purposes and not exported for use by the armed forces, police, or other security forces of South Africa or for other military use.

(c) The President shall prepare and submit to Congress every six months a report describing any license issued pursuant to subsection (b).

NOTIFICATION OF CERTAIN PROPOSED UNITED STATES MUNITIONS LIST EXPORTS

SEC. 318. (a) Notwithstanding any other provision of this Act, the President shall—

(1) notify the Congress of his intent to allow the export to South Africa of any item which is on the United States Munitions List and which is not covered by the United Nations Security Council Resolution 418 of November 4, 1977, and

(2) certify that such item shall be used solely for commercial purposes and not exported for use by the armed forces, police, or other security forces of South Africa or for other military use.

(b)(1) No item described in subsection (a) may be exported if the Congress, within 30 days of continuous session after a certification is made under subsection (a)(2), enacts, in accordance with section 602 of this Act, a joint resolution disapproving such export.

(2) For purposes of paragraph (1), the term "continuous session" is used within the meaning of section 906(b) of title 5, United States Code.

PROHIBITION ON IMPORTATION OF SOUTH AFRICAN AGRICULTURAL PRODUCTS AND FOOD

SEC. 319. Notwithstanding any other provision of law, no—

(1) agricultural commodity or product or any byproduct or derivative thereof, or

(2) article that is suitable for human consumption,

that is a product of South Africa may be imported into the United States after the date of enactment of this Act.

PROHIBITION ON IMPORTATION OF IRON AND STEEL

SEC. 320. Notwithstanding any other provision of law, no iron or steel produced, or iron ore extracted, in South Africa may be imported into the United States, except that any such commodity may be imported pursuant to a contract entered into before August 15, 1986, if no shipment of such commodity is imported by a national of the United States under such contract after December 31, 1986.

PROHIBITION ON EXPORTS OF CRUDE OIL AND PETROLEUM PRODUCTS

SEC. 321. (a) No crude oil or refined petroleum product which is subject to the jurisdiction of the United States may be exported to South Africa, and no crude oil or refined petroleum product may be exported to South Africa by a person subject to the jurisdiction of the United States.

(b) Subsection (a) does not apply to any export pursuant to a contract entered into before the date of enactment of this Act, if no shipment of such export is made under such contract after December 31, 1986.

[SEC. 322. PROHIBITION ON COOPERATION WITH THE ARMED FORCES OF SOUTH AFRICA]

PROHIBITION ON SUGAR IMPORTS

SEC. 323. (a)(1) Notwithstanding any other provision of law, no sugars, sirups, or molasses that are products of the Republic of South Africa may be imported into the United States after the date of enactment of this Act.

(2) The aggregate quantity of sugars, sirups, and molasses that—

(A) are products of the Philippines, and

(B) may be imported into the United States (determined without regard to this paragraph) under any limitation imposed by law on the quantity of all sugars, sirups, and molasses that may be imported into the United States during any period of time occurring after the date of enactment of this Act,

shall be increased by the aggregate quantity of sugars, sirups, and molasses that are products of the Republic of South Africa which may have been imported into the United States under such limitation during such period if this section did not apply to such period.

[(b) Amendments to headnote 3 of subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States. See Sugar Quotas under Headnote Authorities.]

TITLE IV—MULTILATERAL MEASURES TO UNDERMINE APARTHEID

NEGOTIATING AUTHORITY

SEC. 401. (a) It is the policy of the United States to seek international cooperative agreements with the other industrialized democracies to bring about the complete dismantling of apartheid. Sanctions imposed under such agreements should be both direct and official executive or legislative acts of governments. The net economic effect of such cooperative agreements should be measurably greater than the net economic effect of the measures imposed by this Act.

(b)(1) Negotiations to reach international cooperative agreements with the other industrialized democracies on measures to bring about the complete dismantling of apartheid should begin promptly and should be concluded not later than 180 days from the enactment of this Act. During this period, the President or, at his direction, the Secretary of State should convene an international conference of the other industrialized democracies in order to reach cooperative agreements to impose sanctions against South Africa to bring about the complete dismantling of apartheid.

(2) The President shall, not less than 180 days after the date of enactment of this Act, submit to the Congress a report containing—

(A) a description of United States efforts to negotiate multilateral measures to bring about the complete dismantling of apartheid; and

(B) a detailed description of economic and other measures adopted by the other industrialized countries to bring about the complete dismantling of apartheid, including an assessment of the stringency with which such measures are enforced by those countries.

(c) If the President successfully concludes an international agreement described in subsection (b)(1), he may, after such agreement enters into force with respect to the United States, adjust, modify, or otherwise amend the measures imposed under any provision of title III to conform with such agreement.

(d) Each agreement submitted to the Congress under this subsection shall enter into force with respect to the United States if (and only if)—

(1) the President, not less than 30 days before the day on which he enters into such agreement, notifies the House of Representatives and the Senate of his intention to enter into such an agreement, and promptly thereafter publishes notice of such intention in the Federal Register.

(2) after entering into the agreement, with President transmits to the House of Representatives and to the Senate a document containing a copy of the final legal text of such agreement, together with—

(A) a description of any administrative action proposed to implement such agreement and an explanation as to how the proposed administrative action would change or affect existing law, and

(B) a statement of his reasons as to how the agreement serves the interest of United States foreign policy and as to why the proposed administrative action is required or appropriate to carry out the agreement; and

(3) a joint resolution approving such agreement has been enacted, in accordance with section 602 of this Act, within 30 days of transmittal of such document to the Congress.

(e) It is the sense of the Congress that the President should instruct the Permanent Representative of the United States to the United Nations to propose that the United Nations Security Council, pursuant to Article 41 of the United Nations Charter, impose measures against South Africa of the same type as are imposed by this Act.

LIMITATION ON IMPORTS FROM OTHER COUNTRIES

Sec. 402. The President is authorized to limit the importation into the United States of any product or service of a foreign country to the extent to which such foreign country benefits from, or otherwise takes commercial advantage of, any sanction or prohibition imposed by or under this Act.

[SEC. 403. PRIVATE RIGHT OF ACTION]

TITLE V—FUTURE POLICY TOWARD SOUTH AFRICA

ADDITIONAL MEASURES

Sec. 501. (a) It shall be the policy of the United States to impose additional measures against the Government of South Africa if substantial progress has not been made within twelve months of the date of enactment of this Act in ending the system of apartheid and establishing a nonracial democracy.

(b) The President shall prepare and transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate within twelve months of the date of enactment of this Act, and every twelve months thereafter, a report on the extent to which significant progress has been made toward ending the system of apartheid, including—

(1) an assessment of the extent to which the Government of South Africa has taken the steps set forth in section 101(b) of this Act;

(2) an analysis of any other actions taken by the Government of South Africa in ending the system of apartheid and moving toward a nonracial democracy; and

(3) the progress, or lack of progress, made in reaching a negotiated settlement to the conflict in South Africa.

(c) If the President determines that significant progress has not been made by the Government of South Africa in ending the system of apartheid and establishing a nonracial democracy, the President shall include in the report required by subsection (b) a recommendation on which of the following additional measures should be imposed:

(1) a prohibition on military assistance to those countries that the report required by section 508 identifies as continuing to circumvent the international embargo on arms and military technology to South Africa;

(2) a prohibition on the importation of diamonds from South Africa;

(3) a prohibition on United States banks accepting, receiving, or holding deposit accounts from South African nationals; and

(4) a prohibition on the importation into the United States of strategic minerals from South Africa.

(d) A joint resolution which would enact part or all of the measures recommended by the President pursuant to subsection (c) shall be considered in accordance with the provisions of section 602 of this Act.

LIFTING OF PROHIBITIONS

SEC. 502. (a) Notwithstanding any other provision of this Act, the President may lift any prohibition contained in this Act imposed against South Africa if the President determines, after six months from the date of the imposition of such prohibition, and so reports to Congress, that such prohibition would increase United States dependence upon any member country or observer country of the Council for Mutual Economic Assistance (C.M.E.A.) for the importation of coal or any strategic and critical material to an amount which exceeds by weight the average amounts of such imports from such country during the period 1981 through 1985.

(b)(1) Not later than 30 days after the date of enactment of this Act, the Secretary of Commerce shall prepare and transmit to the Congress a report setting forth for each country described in subsection (a)—

(A) the average amount of such imports from such country during the period of 1981 through 1985; and

(B) the current amount of such imports from such country entering the United States.

(2) Thirty days after transmittal of the report required by paragraph (1), and every thirty days thereafter, the President shall prepare and transmit to the Congress a report containing the information described in paragraph (1)(B).

[SEC. 503. STUDY OF HEALTH CONDITIONS IN THE "HOMELANDS" AREAS OF SOUTH AFRICA]

REPORT ON SOUTH AFRICAN IMPORTS

SEC. 504. (a) Not later than 90 days after the date of enactment of this Act, the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report on the extent to which the United States is dependent on the importation from South Africa of—

(1) chromium,
(2) cobalt,
(3) manganese,
(4) platinum group metals,
(5) ferroalloys, and
(6) other strategic and critical materials (within the meaning of the Strategic and Critical Materials Stock Piling Act).

(b) The President shall develop a program which reduces the dependence, if any, of the United States on the importation from South Africa of the materials identified in the report submitted under subsection (a).

[SEC. 505. STUDY AND REPORT ON THE ECONOMY OF SOUTHERN AFRICA]

[SEC. 506. REPORT ON RELATIONS BETWEEN OTHER INDUSTRIALIZED DEMOCRACIES AND SOUTH AFRICA]

[SEC. 507. STUDY AND REPORT ON DEPOSIT ACCOUNTS OF SOUTH AFRICAN NATIONALS IN UNITED STATES BANKS]

STUDY AND REPORT ON THE VIOLATION OF THE INTERNATIONAL EMBARGO ON SALE AND EXPORT OF MILITARY ARTICLES TO SOUTH AFRICA

SEC. 508. (a) The President shall conduct a study on the extent to which the international embargo on the sale and exports of arms and military technology to South Africa is being violated.

(b) Not later than 179 days after the date of enactment of this Act, the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report setting forth the findings of the study required by subsection (a), including an identification of those countries engaged in such sale or export, with a view to terminating United States military assistance to those countries.

[SEC. 509. REPORT ON COMMUNIST ACTIVITIES IN SOUTH AFRICA]

PROHIBITION ON THE IMPORTATION OF SOVIET GOLD COINS

SEC. 510. (a) No person, including a bank, may import into the United States any gold coin minted in the Union of Soviet Socialist

Republics or offered for sale by the Government of the Union of Soviet Socialist Republics.

(b) Any individual who violates this section or any regulations issued to carry out this section shall be fined not more than five times the value of the gold coins involved.

[SEC. 511. ECONOMIC SUPPORT FOR DISADVANTAGED SOUTH AFRICANS]

[SEC. 512. REPORT ON THE AFRICAN NATIONAL CONGRESS]

TITLE VI—ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

REGULATORY AUTHORITY

SEC. 601. The President shall issue such rules, regulations, licenses, and orders as are necessary to carry out the provisions of this Act, including taking such steps as may be necessary to continue in effect the measures imposed by Executive Order 12532 of September 9, 1985, and Executive Order 12535 of October 1, 1985, and by any rule, regulation, license, or order issued thereunder (to the extent such measures are not inconsistent with this Act.)

CONGRESSIONAL PRIORITY PROCEDURES

SEC. 602. (a)(1) The provisions of this subsection apply to the consideration in the House of Representatives of a joint resolution under sections 311(b), 318(b), 401(d), and 501(d).

(2) A joint resolution shall, upon introduction, be referred to the Committee on Foreign Affairs of the House of Representatives.

(3)(A) At any time after the joint resolution placed on the appropriate calendar has been on that calendar for a period of 5 legislative days, it is in order for any Member of the House (after consultation with the Speaker as to the most appropriate time for the consideration of that joint resolution) to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of that joint resolution. The motion is highly privileged and is in order even though a previous motion to the same effect has been disagreed to. All points of order against the joint resolution under clauses 2 and 6 of Rule XXI of the Rules of the House are waived. If the motion is agreed to, the resolution shall remain the unfinished business of the House until disposed of. A motion to reconsider the vote by which the motion is disagreed to shall not be in order.

(B) Debate on the joint resolution shall not exceed ten hours, which shall be divided equally between a Member favoring and a Member opposing the joint resolution. A motion to limit debate is in order at any time in the House or in the Committee of the Whole and is not debatable.

(C) An amendment to the joint resolution is not in order.

(D) At the conclusion of the debate on the joint resolution, the Committee of the Whole shall rise and report the joint resolution back to the House, and the previous question shall be considered as ordered on the joint resolution to final passage without intervening motion.

(b)(1) The provisions of this subsection apply to the consideration in the Senate of a joint resolution under section 311(b), 318(b), 401(d), or 501(d).

(2) A joint resolution shall, upon introduction, be referred to the Committee on Foreign Relations of the Senate.

(3) A joint resolution described in this section shall be considered in the Senate in accordance with the procedures contained in paragraphs (3) through (7) of section 8066(c) of the Department of Defense Appropriations Act, 1985 (as contained in Public Law 98-473), except that—

(A) references in such paragraphs to the Committee on Appropriations of the Senate shall be deemed to be references to the Committee on Foreign Relations of the Senate; and

(B) amendments to the joint resolution are in order.

(c) For purposes of this subsection, the term "joint resolution" means only—

(1) in the case of section 311(b), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives the report described in section 311(b) and for which the matter after the resolving clause reads as follows: "That the Congress, having received on the report of the President containing the determination required by section 311(b) of the Comprehensive Anti-Apartheid Act of 1986, disapproves of such determination.", with the date of the receipt of the report inserted in the blank;

(2) In the case of secion 318(b), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives a certification of the President pursuant to section 318(b) and for which the matter after the resolving clause reads as follows: "That the Congress, having received on a certification of the President under section 318(b)(2) of the Comprehensive Anti-Apartheid Act of 1986, approves the President's certification.", with the date of the receipt of the certification inserted in the blank;

(3) in the case of section 401(d)(3), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives the document described in section 401(d)(2) and for which the matter after the resolving clause reads as follows: "That the Congress, having received on the text of the international agreement described in section 401(d)(3) of the Comprehensive Anti-Apartheid Act of 1986, approves of such agreement.", with the date of the receipt of the text of the agreement inserted in the blank; and

(4) in the case of section 501(d), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives the determination of the President pursuant to section 501(c) and for which the matter after the resolving clause reads as follows: "That the Congress, having received on a determination of the President under section 501(c) of the Comprehensive Anti-Apartheid Act of 1986, approves the President's determination.", with the date of the receipt of the determination inserted in the blank.

(d) As used in this section, the term "legislative day" means a day on which the House of Representatives or the Senate is in session, as the case may be.

(e) This section is enacted—

(1) as an exercise of the rulemaking powers of the House of Representatives and the Senate, and as such it is deemed a part of the Rules of the House and Rules of the Senate, respectively, but applicable only with respect to the procedure to be followed in the House and the Senate in the case of joint resolutions under this section, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of the House and the Senate to change their rules at any time, in the same manner, and to the same extent as in the case of any other rule of the House or Senate, and of the right of the Committee on Rules of the House of Representatives to report a resolution for the consideration of any measure.

ENFORCEMENT AND PENALTIES

SEC. 603. (a)(1) The President with respect to his authorities under section 601 shall take the necessary steps to ensure compliance with the provisions of this Act and any regulations, licenses, and orders issued to carry out this Act, including establishing mechanisms to monitor compliance with this Act and such regulations, licenses, and orders.

(2) In ensuring such compliance, the President may—

(A) require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction described in this Act either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which a foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this Act; and

(B) conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation.

(b) Except as provided in subsection (d)—

(1) any person that violates the provisions of this Act, or any regulation, license, or order issued to carry out this Act shall be subject to a civil penalty of $50,000;

(2) any person, other than an individual, that willfully violates the provisions of this Act, or any regulation, license, or order issued to carry out this Act shall be fined not more than $1,000,000;

(3) any individual who willfully violates the provisions of this Act or any regulation, license, or order issued to carry out this Act shall be fined not more than $50,000, or imprisoned not more than 10 years, or both; and

(4) any individual who violates section 301(a) or any regulations issued to carry out that section shall, instead of the pen-

alty set forth in paragraph (2), be fined not more than 5 times the value of the krugerrands or gold coins involved.

(c)(1) Whenever a person commits a violation under subsection (b)—

(A) any officer, director, or employee of such person, or any natural person in control of such person who knowingly and willfully ordered, authorized, acquiesced in, or carried out the act or practice constituting the violation, and

(B) any agent of such person who knowingly and willfully carried out such act or practice,

shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(2) Paragraph (1) shall not apply in the case of a violation by an individual of section 301(a) of this Act or of any regulation issued to carry out that section.

(3) A fine imposed under paragraph (1) on an individual for an act or practice constituting a violation may not be paid, directly or indirectly, by the person committing the violation itself.

(d)(1) Any person who violates any regulation issued under section 208(d) or who, in a registration statement or report required by the Secretary of State, makes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall be subject to civil penalty of not more than $10,000 imposed by the Secretary of State. The provisions of subsections (d), (e), and (f) of section 11 of the Export Administration Act of 1979 shall apply with respect to any such civil penalty.

(2) Any person who commits a willful violation under paragraph (1) shall upon conviction be fined not more than $1,000,000 or imprisoned not more than 2 years, or both.

(3) Nothing in this section may be construed to authorize the imposition of any penalty for failure to implement the Code of Conduct.

APPLICABILITY TO EVASIONS OF ACT

SEC. 604. This Act and the regulations issued to carry out this Act shall apply to any person who undertakes or causes to be undertaken any transaction or activity with the intent to evade this Act or such regulations.

[SEC. 605. CONSTRUCTION OF ACT]

[SEC. 606. STATE OR LOCAL ANTI-APARTHEID LAWS, ENFORCE]

F. Other Prohibitions and Bans

Sections 504 and 505 of the International Security and Development Cooperation Act of 1985

[22 U.S.C. 2349 aa-8, aa-9, P.L. 99-83]

SEC. 504. PROHIBITION ON IMPORTS FROM AND EXPORTS TO LIBYA.

(a) PROHIBITION ON IMPORTS.—Notwithstanding any other provision of law, the President may prohibit any article grown, produced, extracted, or manufactured in Libya from being imported into the United States.

(b) PROHIBITION ON EXPORTS.—Notwithstanding any other provision of law, the President may prohibit any goods or technology, including technical data or other information, subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, from being exported to Libya.

(c) DEFINITION.—For purposes of this section, the term "United States", when used in a geographical sense, includes territories and possessions of the United States.

SEC. 505. BAN ON IMPORTING GOODS AND SERVICES FROM COUNTRIES SUPPORTING TERRORISM.

(a) AUTHORITY.—The President may ban the importation into the United States of any good or service from any country which supports terrorism or terrorist organizations or harbors terrorists or terrorist organizations.

(b) CONSULTATION.—The President, in every possible instance, shall consult with the Congress before exercising the authority granted by this section and shall consult regularly with the Congress so long as that authority is being exercised.

(c) REPORTS.—Whenever the President exercises the authority granted by this section, he shall immediately transmit to the Congress a report specifying—

(1) the country with respect to which the authority is to be exercised and the imports to be prohibited;

(2) the circumstances which necessitate the exercise of such authority;

(3) why the President believes those circumstances justify the exercise of such authority; and

(4) why the President believes the prohibitions are necessary to deal with those circumstances.

At least once during each succeeding 6-month period after transmitting a report pursuant to this subsection, the President shall report to the Congress with respect to the actions taken, since the last such report, pursuant to this section and with respect to any changes which have occurred concerning any information previously furnished pursuant to this subsection.

(d) DEFINITION.—For purposes of this section, the term "United States" includes territories and possessions of the United States.

Chapter 13: TRADE NEGOTIATING AUTHORITY AND OBJECTIVES

A. RECIPROCAL TRADE AGREEMENT AUTHORITIES

1. Nontariff Barrier and Bilateral Tariff Authority

Section 102 of Trade Act of 1974, as amended

[19 U.S.C. 2112, P.L. 93-618, as amended by P.L. 96-39, P.L. 98-573, P.L. 99-47, and P.L. 99-514]

SEC. 102. BARRIERS TO AND OTHER DISTORTIONS OF TRADE.

(a) The Congress finds that barriers to (and other distortions of) international trade are reducing the growth of foreign markets for the products of United States agriculture, industry, mining, and commerce, diminishing the intended mutual benefits of reciprocal trade concessions adversely affecting the United States economy, preventing fair and equitable access to supplies, and preventing the development of open and nondiscriminatory trade among nations. The President is urged to take all appropriate and feasible steps within his power (including the full exercise of the rights of the United States under international agreements) to harmonize, reduce, or eliminate such barriers to (and other distortions of) international trade. The President is further urged to utilize the authority granted by subsection (b) to negotiate trade agreements with other countries and instrumentalities providing on a basis of mutuality for the harmonization, reduction, or elimination of such barriers to (and other distortions of) international trade. Nothing in this subsection shall be construed as prior approval of any legislation which may be necessary to implement an agreement concerning barriers to (or other distortions of) international trade.

(b)(1) Whenever the President determines that any barriers to (or other distortions of) international trade of any foreign country or the United States unduly burden and restrict the foreign trade of the United States or adversely affect the United States economy, or that the imposition of such barriers is likely to result in such a burden, restriction, or effect, and that the purposes of this Act will be promoted thereby, the President, during the 13-year period beginning on the date of the enactment of this Act, may enter into trade agreements with foreign countries or instrumentalities providing for the harmonization, reduction, or elimination of such barriers (or other distortions) or providing for the prohibition of or limitations on the imposition of such barriers (or other distortions).

(2)(A) Trade agreements that provide for the elimination or reduction of any duty imposed by the United States may be entered into under paragraph (1) only with Israel.

(B) The negotiation of any trade agreement entered into under paragraph (1) with Israel that provides for the elimination or reduction of any duty imposed by the United States shall take fully into account any product that benefits from a discriminatory preferential tariff arrangement between Israel and a third country if the tariff preference on such product has been the subject of a challenge by the United States Government under the authority of section 301 of the Trade Act of 1974 and the General Agreement on Tariffs and Trade.

(C) Notwithstanding any other provision of this section, the requirements of subsections (c) and (e)(1) shall not apply to any trade agreement entered into under paragraph (1) with Israel that provides for the elimination or reduction of any duty imposed by the United States.

(3) Notwithstanding any other provision of law, no trade benefit shall be extended to any country by reason of the extension of any trade benefit to another country under a trade agreement entered into under paragraph (1) with such other country that provides for the elimination or reduction of any duty imposed by the United States.

(4)(A) Notwithstanding paragraph (2), a trade agreement that provides for the elimination or reduction of any duty agreement that provides for the elimination or reduction of any duty imposed by the United States may be entered into under paragraph (1) with any country other than Israel if—

(i) such country requested the negotiation of such an agreement, and

(ii) the President, at least 60 days prior to the date notice is provided under subsection (e)(1)—

(I) provides written notice of such negotiations to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and

(II) consults with such committees regarding the negotiation of such agreement.

(B) The provisions of section 151 shall not apply to an implementing bill (within the meaning of section 151(b)) if—

(i) such implementing bill contains a provision approving of any trade agreement which—

(I) is entered into under this section with any country other than Israel, and

(II) provides for the elimination or reduction of any duty imposed by the United States, and

(ii) either—

(I) the requirements of subparagraph (A) were not met with respect to the negotiation of such agreement, or

(II) the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives disapproved of the negotiation of such agreement before the close of the 60-day period which begins on the date notice is provided under subparagraph (A)(ii)(I) with respect to the negotiation of such agreement.

(C) The 60-day period described in subparagraphs (A)(ii) and (B)(ii)(II) shall be computed without regard to—

(i) the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(ii) any Saturday and Sunday, not excluded under clause (i), when either House of Congress is not in session.

(c) Before the President enters into any trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade, he shall consult with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and with each committee of the House and the Senate and each joint committee of the Congress which has jurisdiction over legislation involving subject matters which would be affected by such trade agreement. Such consultation shall include all matters relating to the implementation of such trade agreement as provided in subsections (d) and (e). If it is proposed to implement such trade agreement, together with one or more other trade agreements entered into under this section, in a single implementing bill, such consultation shall include the desirability and feasibility of such proposed implementation.

(d) Whenever the President enters into a trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade, he shall submit such agreement, together with a draft of an implementing bill (described in section 151(b)) and a statement of any administrative action proposed to implement such agreement, to the Congress as provided in subsection (e), and such agreement shall enter into force with respect to the United States only if the provisions of subsection (e) are complied with and the implementing bill submitted by the President is enacted into law.

(e) Each trade agreement submitted to the Congress under this subsection shall enter into force with respect to the United States if (and only if)—

(1) the President, not less than 90 days before the day on which he enters into such trade agreement, notifies the House of Representatives and the Senate of his intention to enter into such an agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(2) after entering into the agreement, the President transmits a document to the House of Representatives and to the Senate containing a copy of the final legal text of such agreement together with—

(A) a draft of an implementing bill and a statement of any administrative action proposed to implement such agreement, and an explanation as to how the implementing bill and proposed administrative action change or affect existing law, and

(B) a statement of his reasons as to how the agreement serves the interests of United States commerce and as to why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement; and

(3) the implementing bill is enacted into law.

(f) To insure that a foreign country on instrumentality which receives benefits under a trade agreement entered into under this section is subject to the obligations imposed by such agreement, the President may recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agreement apply solely to the parties to such agreement, if such application is consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that the benefits and obligations of such agreement not apply uniformly to all parties to such agreement, if such application is consistent with the terms of such agreement.

(g) For purposes of this section—

(1) the term "barrier" includes—

(A) the American selling price basis of customs evaluation as defined in section 402 or 402a of the Tariff Act of 1930, as appropriate, and

(B) any duty or other import restriction;

(2) the term "distortion" includes a subsidy; and

(3) the term "international trade" includes—

(A) trade in both goods and services, and

(B) foreign direct investment by United States persons, especially if such investment has implications for trade in goods and services.

2. Trade Agreement Negotiating Objectives

Sections 103–108 and 121 of Trade Act of 1974, as amended

[19 U.S.C. 2113–2118, P.L. 93–618, as amended by P.L. 98–573, 19 U.S.C. 2131, P.L. 98–618]

SEC. 103. OVERALL NEGOTIATING OBJECTIVE.

The overall United States negotiating objective under sections 101 and 102 shall be to obtain more open and equitable market access and the harmonization, reduction, or elimination of devices which distort trade or commerce. To the maximum extent feasible, the harmonization, reduction, or elimination of agricultural trade barriers and distortions shall be undertaken in conjunction with the harmonization, reduction, or elimination of industrial trade barriers and distortions.

SEC. 104. SECTOR NEGOTIATING OBJECTIVE.

(a) A principal United States negotiating objective under sections 101 and 102 shall be to obtain, to the maximum extent feasible, with respect to appropriate product sectors of manufacturing, and with respect to the agricultural sector, competitive opportunities for United States exports to the developed countries of the world equivalent to the competitive opportunities afforded in United States markets to the importation of like or similar products, taking into account all barriers (including tariffs) to and other distortions of international trade affecting that sector.

(b) As a means of achieving the negotiating objective set forth in subsection (a), to the extent consistent with the objective of maximizing overall economic benefit to the United States (through maintaining and enlarging foreign markets for products of United States agriculture, industry, mining, and commerce, through the development of fair and equitable market opportunities, and through open and nondiscriminatory world trade), negotiations shall, to the extent feasible be conducted on the basis of appropriate product sectors of manufacturing.

(c) For the purposes of this section and section 135, the United States Trade Representative together with the Secretary of Commerce, Agriculture, or Labor, as appropriate, shall, after consultation with the Advisory Committee for Trade Negotiations established under section 135 and after consultation with interested private or non-Federal governmental organizations, identify appropriate product sectors of manufacturing.

(d) If the President determines that competitive opportunities in one or more product sectors will be significantly affected by a trade agreement concluded under section 101 or 102, he shall submit to the Congress with each such agreement an analysis of the extent to which the negotiating objective set forth in subsection (a) is achieved by such agreement in each product sector or product sectors.

SEC. 104A. NEGOTIATING OBJECTIVES WITH RESPECT TO TRADE IN SERVICES, FOREIGN DIRECT INVESTMENT, AND HIGH TECHNOLOGY PRODUCTS.

(a) TRADE IN SERVICES.—

(1) GENERAL.—Principal United States negotiating objectives under section 102 shall be—

(A) to reduce or to eliminate barriers to, or other distortions of, international trade in services (particularly United States service sector trade in foreign markets), including barriers that deny national treatment and restriction on the establishment and operation in such markets; and

(B) to develop internationally agreed rules, including dispute settlement procedures, which—

(i) are consistent with the commercial policies of the United States, and

(ii) will reduce or eliminate such barriers or distortions and help ensure open international trade in services.

(2) DOMESTIC OBJECTIVES.—In pursuing the objectives described in paragraph (1), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the law and regulations related thereto.

(b) FOREIGN DIRECT INVESTMENT.—

(1) IN GENERAL.—Principal United States negotiating objectives under section 102 shall be—

(A) to reduce or to eliminate artificial or trade-distorting barriers to foreign direct investment, to expand the principle of national treatment, and to reduce unreasonable barriers to establishment; and

(B) to develop internationally agreed rules, including dispute settlement procedures, which—

(i) will help ensure a free flow of foreign direct investment, and

(ii) will reduce or eliminate the trade distortive effects of certain investment related measures.

(2) DOMESTIC OBJECTIVES.—In pursuing the objectives described in paragraph (1), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the laws and regulations related thereto.

(c) HIGH TECHNOLOGY PRODUCTS.—Principal United States negotiating objectives shall be—

(1) to obtain and preserve the maximum openness with respect to international trade and investment in high technology products and related services;

(2) to obtain the elimination or reduction of, or compensation for, the significantly distorting effects of foreign government acts, policies, or practices identified in section 181, with particular consideration given to the nature and extent of foreign government intervention affecting United States exports of high technology products or investments in high technology industries, including—

(A) foreign industrial policies which distort international trade or investment;

(B) measures which deny national treatment or otherwise discriminate in favor of domestic high technology industries;

(C) measures which fail to provide adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property (including trademarks, patents, and copyrights);

(D) measures which impair access to domestic markets for key commodity products; and

(E) measures which facilitate or encourage anticompetitive market practices or structures;

(3) to obtain commitments that official policy of foreign countries or instrumentalities will not discourage government or private procurement of foreign high technology products and related services;

(4) to obtain the reduction or elimination of all tariffs on, and other barriers to, United States exports of high technology products and related services;

(5) to obtain commitments to foster national treatment;

(6) to obtain commitments to—

(A) foster the pursuit of joint scientific cooperation between companies, institutions or governmental entities of the United States and those of the trading partners of the United States in areas of mutual interest through such measures as financial participation and technical and personnel exchanges, and

(B) ensure that access by all participants to the results of any such cooperative efforts should not be impaired; and

(7) to provide effective minimum safeguards for the acquisition and enforcement of intellectual property rights and the property value of proprietary data.

(d) DEFINITION OF BARRIERS AND OTHER DISTORTIONS.— For purposes of subsection (a), the term "barriers to, or other distortions of, international trade in services" includes, but is not limited to—

(1) barriers to establishment in foreign markets, and

(2) restrictions on the operation of enterprises in foreign markets, including—

(A) direct or indirect restrictions on the transfer of information into, or out of, the country or instrumentality concerned, and

(B) restrictions on the use of data processing facilities within or outside of such country or instrumentality.

SEC. 105. BILATERAL TRADE AGREEMENTS.

If the President determines that bilateral trade agreements will more effectively promote the economic growth of, and full employment in, the United States, then, in such cases, a negotiating objective under sections 101 and 102 shall be to enter into bilateral trade agreements. Each such trade agreement shall provide for mutually advantageous economic benefits.

SEC. 106. AGREEMENTS WITH DEVELOPING COUNTRIES.

A United States negotiating objective under sections 101 and 102 shall be to enter into trade agreements which promote the economic growth of both developing countries and the United States and the mutual expansion of market opportunities.

SEC. 107. INTERNATIONAL SAFEGUARD PROCEDURES.

(a) A principal United States negotiating objective under section 102 shall be to obtain internationally agreed upon rules and procedures, in the context of the harmonization, reduction, or elimination of barriers to, and other distortions of, international trade, which permit the use of temporary measures to ease adjustment to changes occurring in competitive conditions in the domestic markets of the parties to an agreement resulting from such negotiations due to the expansion of international trade.

(b) Any agreement entered into under section 102 may include provisions establishing procedures for—

(1) notification of affected exporting countries,

(2) international consultations,

(3) international review of changes in trade flows,

(4) making adjustments in trade flows as the result of such changes, and

(5) international mediation.

Such agreements may also include provisions which—

(A) exclude, under specified conditions, the parties thereto from compensation obligations and retaliation, and

(B) permit domestic public procedures through which interested parties have the right to participate.

SEC. 108. ACCESS TO SUPPLIES.

(a) A principal United States negotiating objective under section 102 shall be to enter into trade agreements with foreign countries and instrumentalities to assure the United States of fair and equitable access at reasonable prices to supplies of articles of commerce which are important to the economic requirements of the United States and for which the United States does not have, or cannot easily develop, the necessary domestic productive capacity to supply its own requirements.

(b) Any agreement entered into under section 102 may include provisions which—

(1) assure the United States the continued availability of important articles at reasonable prices, and

(2) provide reciprocal concessions or comparable trade obligations, or both, by the United States.

SEC. 121. STEPS TO BE TAKEN TOWARD GATT REVISION; AUTHORIZATION OF APPROPRIATIONS FOR GATT.

(a) The President shall, as soon as practicable, take such action as may be necessary to bring trade agreements heretofore entered into, and the application thereof, into conformity with principles promoting the development of an open, nondiscriminatory, and fair world economic system. The action and principles referred to in the preceding sentence include, but are not limited to, the following—

(1) the revision of decisionmaking procedures in the General Agreement on Tariffs and Trade (hereinafter in this subsection referred to as "GATT") to more nearly reflect the balance of economic interests,

(2) the revision of article XIX of the GATT into a truly international safeguard procedure which takes into account all forms of import restraints countries use in response to injurious competition or threat of such competition,

(3) the extension of GATT articles to conditions of trade not presently covered in order to move toward more fair trade practices,

(4) the adoption of international fair labor standards and of public petition and confrontation procedures in the GATT,

(5) the revision of GATT articles with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct rather than indirect taxes for revenue needs,

(6) the revision of the balance-of-payments provision in the GATT articles so as to recognize import surcharges as the preferred means by which industrial countries may handle balance-of-payments deficits insofar as import restraint measures are required,

(7) the improvement and strengthening of the provisions of GATT and other international agreements governing access to supplies of food, raw materials, and manufactured or semimanufactured products, including rules and procedures governing the imposition of export controls, the denial of fair and equitable access to such supplies, and effective consultative procedures on problems of supply shortages,

(8) the extension of the provision of GATT or other international agreements to authorize multilateral procedures by contracting parties with respect to member or nonmember countries which deny fair and equitable access to supplies of food, raw materials, and manufactured or semi-manufactured products, and thereby substantially injure the international community,

(9) any revisions necessary to establish procedures for regular consultation among countries and instrumentalities with respect to international trade and procedures to adjudicate commercial disputes among such countries or instrumentalities,

(10) any revisions necessary to apply the principles of reciprocity and nondiscrimination, including the elimination of special preferences and reverse preferences, to all aspects of international trade,

(11) any revisions necessary to define the forms of subsidy to industries producing products for export and the forms of subsidy to attract foreign investment which are consistent with an open, nondiscriminatory, and fair system of international trade, and

(12) consistent with the provisions of section 107, any revisions necessary to establish within the GATT an international agreements on articles (including footwear), including the creation of regular and institutionalized mechanisms for the settlement of disputes, and of a surveillance body to monitor all international shipments in such articles.

(b) The President shall, to the extent feasible, enter into agreements with foreign countries or instrumentalities to establish the principles described in subsection (a) with respect to international trade between the United States and such countries or instrumentalities.

(c) If the President enters into a trade agreement which establishes rules or procedures, including those set forth in subsection (a), promoting the development of an open, nondiscriminatory, and fair world economic system and if the implementation of such agreement will change any provision of Federal law (including a material change in an administrative rule), such agreement shall take effect with respect to the United States only if the appropriate implementing legislation is enacted by the Congress unless implementation of such agreement is effected pursuant to authority delegated by Congress. Such trade agreement may be entered into under section 102. Nothing in this section shall be construed as prior approval of any legislation necessary to implement a trade agreement entered into under this section.

(d) There are authorized to be appropriated annually such sums as may be necessary for the payment by the United States of its share of the expenses of the Contracting Parties to the General Agreement on Tariffs and Trade. This authorization does not imply approval or disapproval by the Congress of all articles of the General Agreement on Tariffs and Trade.

3. Barriers to Market Access

Section 181 of Trade Act of 1974

[19 U.S.C. 2241 note, P.L. 93-618, as added by P.L. 98-573]

SEC. 181. ACTIONS CONCERNING BARRIERS TO MARKET ACCESS.

(a) NATIONAL TRADE ESTIMATES.—

(1) IN GENERAL.—Not later than the date on which the initial report is required under subsection (b)(1), the United States

Trade Representative, through the interagency trade organization established pursuant to section 242(a) of the Trade Expansion Act of 1962 shall—

(A) identify and analyze acts, policies, or practices which constitute significant barriers to, or distortions of—

(i) United States exports of goods or services (including agricultural commodities; and property protected by trademarks, patents, and copyrights exported or licensed by United States persons), and

(ii) foreign direct investment by United States persons, especially if such investment has implications for trade in goods or services; and

(B) make an estimate of the trade-distorting impact on United States commerce of any act, policy, or practice identified under subparagraph (A).

(2) CERTAIN FACTORS TAKEN INTO ACCOUNT IN MAKING ANALYSIS AND ESTIMATE.—In making any analysis or estimate under paragraph (1), the Trade Representative shall take into account—

(A) the relative impact of the act, policy, or practice on United States commerce;

(B) the availability of information to document prices, market shares, and other matters necessary to demonstrate the effects of the act, policy, or practice;

(C) the extent to which such act, policy, or practice is subject to international agreements to which the United States is a party; and

(D) any advice given through appropriate committees established pursuant to section 135.

(3) ANNUAL REVISIONS AND UPDATES.—The Trade Representative shall annually revise and update the analysis and estimate under paragraph (1).

(b) REPORT TO CONGRESS.—

(1) IN GENERAL.—On or before the date which is one year after the date of the enactment of the International Trade and Investment Act, and each year thereafter, the Trade Representative shall submit the analysis and estimate under subsection (a) to the Committee on Finance of the Senate and to the Committee on Ways and Means of the House of Representatives.

(2) REPORTS TO INCLUDE INFORMATION WITH RESPECT TO ACTION BEING TAKEN.—The Trade Representative shall include in each report submitted under paragraph (1) information with respect to any action taken (or the reasons for no action taken) to eliminate any act, policy, or practice identified under subsection (a), including, but not limited to—

(A) any action under section 301, or

(B) negotiations or consultations with foreign governments.

(3) CONSULTATION WITH CONGRESS ON TRADE POLICY PRIORITIES.—The Trade Representative shall keep the committees described in paragraph (1) currently informed with respect to trade policy priorities for the purposes of expanding market opportunities.

(c) Assistance of Other Agencies.—

(1) Furnishing of information.—The head of each department or agency of the executive branch of the Government, including any independent agency, is authorized and directed to furnish to the Trade Representative or to the appropriate agency, upon request, such data, reports, and other information as is necessary for the Trade Representative to carry out his functions under this section.

(2) Restrictions on release or use of information.—Nothing in this subsection shall authorize the release of information to, or the use of information by, the Trade Representative in a manner inconsistent with law or any procedure established pursuant thereto.

(3) Personnel and services.—The head of any department, agency, or instrumentality of the United States may detail such personnel and may furnish such services, with or without reimbursement, as the Trade Representative may request to assist in carrying out his functions.

4. Trade in Wine

Title IX of Trade and Tariff Act of 1984

[19 U.S.C. 2801; P.L. 98–573]

SEC. 901. SHORT TITLE.

This title may be cited as the "Wine Equity and Export Expansion Act of 1984".

SEC. 902. CONGRESSIONAL FINDINGS AND PURPOSES.

(a) Congress finds that—

(1) there is a substantial imbalance in international wine trade resulting, in part, from the relative accessibility enjoyed by foreign wines to the United States market while the United States wine industry faces restrictive tariff and nontariff barriers in virtually every existing or potential foreign market;

(2) the restricted access to foreign markets and the continued low prices for United States wine and grape products adversely affect the economic position of our Nation's winemakers and grape growers, as well as all other domestic sectors that depend upon wine production;

(3) the competitive position of United States wine in international trade has been weakened by foreign trade practices, high domestic interest rates, and unfavorable foreign exchange rates;

(4) wine consumption per capita is very low in many major non-wine producing markets and the demand potential for United States wine is significant; and

(5) the United States winemaking industry has the capacity and the ability to export substantial volumes of wine and an increase in United States wine exports will create new jobs, improve this Nation's balance of trade, and otherwise strengthen the national economy.

(b) The purposes of this title are—

(1) to provide wine consumers with the greatest possible choice of wines from wine-producing countries;

(2) to encourage the initiation of an export promotion program to develop, maintain, and expand foreign markets for United States wine; and

(3) to achieve greater access to foreign markets for United States wine and grape products through the reduction or elimination of tariff barriers and nontariff barriers to (or other distortions of) trade in wine.

SEC. 903. DEFINITIONS.

For purposes of this title—

(1) The term "Committees" means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(2) The term "grape product" means grapes and any product (other than wine) made from grapes, including, but not limited to, raisins and grape juice, whether or not concentrated.

(3) The term "major wine trading country" means any foreign country, or group of foreign countries, designated as such under section 904.

(4) The phase "nontariff barrier to (or other distortion of)", in the context of trade in United States wine, includes any measure implemented by the government of a major wine trading country that either gives a competitive advantage to the wine industry of that country or restricts the importation of United States wine into that country.

(5) The term "Trade Representative" means the United States Trade Representative.

(6) The term "United States wine" means wine produced within the customs territory of the United States.

(7) The term "wine" means any fermented alcoholic beverage that—

(A) is made from grapes or other fruit;

(B) contains not less than 0.5 percent alcohol by volume and not more than 24 percent alcohol by volume, including all dilutions and mixtures thereof by whatever process produced; and

(C) is for nonindustrial use.

SEC. 904. DESIGNATION OF MAJOR WINE TRADING COUNTRIES.

(a) The Trade Representative shall designate as a major wine trading country each foreign country, or group of foreign countries represented as an economic union, that, in the judgment of the Trade Representative—

(1) is a potential significant market for United States wine; and

(2) maintains tariff barriers or nontariff barriers to (or other distortions of) trade in United States wine.

(b) In deciding, for purposes of subsection (a)(2), whether a foreign country or group of countries maintains nontariff barriers to (or other distortions of) trade in United States wine, the Trade Representative shall take into account—

(1) the review and report required under section 854(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2135 note);

(2) such relevant actions that may have been taken by that country or group since that review was conducted; and

(3) such information as may be submitted under section 906 by representatives of the wine and grape products industries in the United States, as well as other sources.

SEC. 905. ACTIONS TO REDUCE OR ELIMINATE TARIFF AND NONTARIFF BARRIERS AFFECTING UNITED STATES WINE.

(a) The President shall direct the Trade Representative to enter into consultations with each major wine trading country to seek a reduction or elimination of that country's tariff barriers and nontariff barriers to (or other distortions of) trade in United States wine.

(b)(1) the President shall notify each of the Committees regarding the extent and effect of the efforts undertaken since the submission of the report required under section 854(a) of the Trade Agreements Act of 1979, and during the 12-month period beginning on the date of the enactment of this Act, to expand opportunities in each major wine trading country for exports of United States wine. Such notification, which shall be in the form of a separate written report (that must be submitted within 30 days after the close of that 12-month period) for each major wine trading country, shall include—

(A) a description of each act, policy, and practice (and of its legal basis and operation) in that country that constitutes a tariff barrier or nontariff barrier to (or other distortion of) trade in United States wine (and that description shall be based upon an updating of the report that was submitted to the Congress under section 854(a) of the Trade Agreements Act of 1979);

(B) an assessment of the extent to which each such act, policy, or practice is subject to international agreements to which the United States is a party;

(C) information with respect to any action taken, or proposed to be taken, under existing authority to eliminate or reduce each such act, policy, or practice, including, but not limited to—

(i) any action under the Trade Act of 1974, and

(ii) any negotiation or consultation with any foreign government;

(D) if action referred to in subparagraph (C) was not taken, an explanation of the reasons therefore; and

(E) recommendations to the Congress of any additional legislative authority or other action which the President believes is necessary and appropriate to obtain the elimination or reduction of foreign tariff barriers or nontariff barriers to (or other distortions of) trade in United States wine.

(2) The reports required under paragraph (1) shall be developed and coordinated by the Trade Representative through the interagency trade organization established by section 242(a) of the Trade Expansion Act of 1962.

(c) If the President, after taking into account information and advice received under subsections (a) and (b), section 906 or from other sources, determines that action is appropriate to respond to any act, policy, or practice of a major wine trading country constitutes a tariff barrier or nontariff barrier to (or other distortion of) trade in United States wine and—

(1) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement; or

(2) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President, shall take all appropriate and feasible action under the Trade Act of 1974 to enforce the rights of the United States under any such trade agreement or to obtain the elimination of such act, policy, or practice.

SEC. 906. REQUIRED CONSULTATIONS.

The Trade Representative shall consult with the Committees and with representatives of the wine and grape products industries in the United States—

(1) before identifying tariff barriers and nontariff barriers to (or other distortions of) trade in United States wine and designating major wine trading countries under section 904;

(2) in developing the reports required under section 905(b); and

(3) for purposes of determining whether action by the President is appropriate under any provision of the Trade Act of 1974 with respect to any act, policy, or practice referred to in section 905(b)(1).

SEC. 907. UNITED STATES WINE EXPORT PROMOTION.

In order to develop, maintain, and expand foreign markets for United States wine, the President is encouraged to—

(1) utilize, for the fiscal year ending September 30, 1985, the authority provided under section 135 of the Omnibus Budget Reconciliation Act of 1982 to make available sufficient funds to initiate, in cooperation with nongovernmental trade associations representative of United States wineries, an export promotion program for United States; and

(2) request, for each subsequent fiscal year, an appropriation for such a wine export promotion program that will not be at the expense of any appropriations requested for export promotion programs involving other agriculture commodities.

5. Specific Trade Agreement Authorities

Sections 123 and 125 of Trade Act of 1974; Section 128 of Trade Act of 1974, as added by Section 308 of Trade and Tariff Act of 1984

[19 U.S.C. 2133, 19 U.S.C. 2135, P.L. 93–618; 19 U.S.C. 2114(e), 19 U.S.C. 2138, P.L. 98–573 as amended by P.L. 99–514]

SEC. 123. COMPENSATION AUTHORITY.

(a) Whenever any action has been taken under section 203 to increase or impose any duty or other import restriction, the President—

(1) may enter into trade agreements with foreign countries or instrumentalities for the purpose of granting new concessions as compensation in order to maintain the general level of reciprocal and mutually advantageous concessions; and

(2) may proclaim such modification or continuance of any existing duty, or such continuance of existing duty-free or excise treatment, as he determines to be required or appropriate to carry out any such agreement.

(b)(1) No proclamation shall be made pursuant to subsection (a) decreasing any rate of duty to a rate which is less than 70 percent of the existing rate of duty.

(2) Where the rate of duty in effect at any time is an intermediate stage under section 109, the proclamation made pursuant to subsection (a) may provide for the reduction of each rate of duty at each such stage proclaimed under section 101 by not more than 30 percent of such rate of duty, and may provide for a final rate of duty which is not less than 70 percent of the rate of duty proclaimed as the final stage under section 101.

(3) If the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed the limitations provided by paragraphs (1) and (2) of this subsection by not more than the lesser of—

(A) the difference between such limitation and the next lower whole number, or

(B) one-half of 1 percent ad valorem.

(4) Any concessions granted under subsection (a)(1) shall be reduced and terminated according to substantially the same time schedule for reduction applicable to the relevant import relief under section 203(h).

(c) Before entering into any trade agreement under this section with any foreign country or instrumentality, the President shall consider whether such country or instrumentality has violated trade concessions of benefit to the United States and such violation has not been adequately offset by the action of the United States or by such country or instrumentality.

(d) Notwithstanding the provisions of subsection (a), the authority delegated under section 101 shall be used for the purpose of granting new concessions as compensation within the meaning of this section until such authority terminates.

SEC. 125. TERMINATION AND WITHDRAWAL AUTHORITY.

(a) Every trade agreement entered into under this Act shall be subject to termination, in whole or in part, or withdrawal, upon due notice, at the end of a period specified in the agreement. Such period shall be not more than 3 years from the date on which the agreement becomes effective. If the agreement is not terminated or withdrawn from at the end of the period so specified, it shall be subject to termination or withdrawal thereafter upon not more than 6 months' notice.

(b) The President may at any time terminate, in whole or in part, any proclamation made under this Act.

(c) Whenever the United States, acting in pursuance of any of its rights or obligations under any trade agreement entered into pursuant to this Act, section 201 of the Trade Expansion Act of 1962, or section 350 of the Tariff Act of 1930, withdraws, suspends, or modifies any obligation with respect to the trade of any foreign country or instrumentality thereof, the President is authorized to proclaim increased duties or other import restrictions, to the extent, at such times, and for such periods as he deems necessary or appropriate, in order to exercise the rights or fulfill the obligations of the United States. No proclamation shall be made under this subsection increasing any existing duty to a rate more than 50 percent above the rate set forth in rate column numbered 2 of the Tariff Schedules of the United States, as in effect on January 1, 1975, or 20 percent ad valorem above the rate existing on January 1, 1975, whichever is higher.

(d) Whenever any foreign country or instrumentality withdraws, suspends, or modifies the application of trade agreement obligations of benefit to the United States without granting adequate compensation therefor, the President, in pursuance of rights granted to the United States under any trade agreement and to the extent necessary to protect United States economic interests (including United States balance of payments), may—

(1) withdraw, suspend, or modify the application of substantially equivalent trade agreement obligations of benefit to such foreign country or instrumentality; and

(2) proclaim under subsection (c) such increased duties or other import restrictions as are appropriate to effect adequate compensation from such foreign country or instrumentality.

(e) Duties or other import restrictions required or appropriate to carry out any trade agreement entered into pursuant to this Act, section 201 of the Trade Expansion Act of 1962, or section 350 of the Tariff Act of 1930 shall not be affected by any termination, in whole or in part, of such agreement or by the withdrawal of the United States from such agreement and shall remain in effect after the date of such termination or withdrawal for 1 year, unless the President by proclamation provides that such rates shall be restored to the level at which they would be but for the agreement. Within 60 days after the date of any such termination or withdrawal, the President shall transmit to the Congress his recommendations as to the appropriate rates of duty for all articles which were affected by the termination or withdrawal or would have been so affected but for the preceding sentence.

(f) Before taking any action pursuant to subsection (b), (c), or (d), the President shall provide for a public hearing during the course of which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard, unless he determines that such prior hearings will be contrary to the national interest because of the need for expeditious action, in which case he shall provide for a public hearing promptly after such action.

SEC. 308. NEGOTIATION OF AGREEMENTS CONCERNING HIGH TECHNOLOGY INDUSTRIES.

(a) The President may enter into such bilateral or multilateral agreements as may be necessary or appropriate to achieve the objectives of this section and the negotiating objectives under section 104A(c) of the Trade Act of 1974.

(b)(1) Chapter 2 of title I is amended by inserting at the end thereof the following new section:

"SEC. 128. MODIFICATION AND CONTINUANCE OF TREATMENT WITH RESPECT TO DUTIES ON HIGH TECHNOLOGY PRODUCTS.

"(a) In order to carry out any agreement concluded as a result of the negotiating objectives under section 104A(c), the President may proclaim, subject to the provisions of chapter 3—

"(1) such modification, elimination, or continuance of any existing duty, duty-free, or excise treatment, or

"(2) such additional duties,

as he deems appropriate.

"(b) The President shall exercise his authority under subsection (a) only with respect to the following items listed in the Tariff Schedules of the United States (19 U.S.C. 1202):

"(1) Transistors (provided for in item 687.70, part 5, schedule 6).

"(2) Diodes and rectifiers (provided for in item 687.72, part 5, schedule 6).

"(3) Monolithic integrated circuits (provided for in item 687.74, part 5, schedule 6).

"(4) Other integrated circuits (provided for in item 687.77, part 5, schedule 6).

"(5) Other components (provided for in item 687.81, part 5, schedule 6).

"(6) Parts of semiconductors (provided for in item 687.85, part 5, schedule 6).

"(7) Parts of automatic data-processing machines and units thereof (provided for in item 676.52, part 4G, schedule 6) other than parts incorporating a cathode ray tube.

"(c) TERMINATION.—The President may exercise his authority under this section only during the 5-year period beginning on the date of the enactment of the International Trade and Investment Act.".

(2) The table of contents of chapter 1 of title I is amended by adding at the end thereof the following new item:

"Sec. 128. Modification and continuance of treatment with respect to duties on high technology products.".

6. Trade Agreement Procedural Requirements

Sections 131–135 and 127 of Trade Act of 1974, as amended

[19 U.S.C. 2151–2154, 19 U.S.C. 2137, P.L. 93–618]

SEC. 131. INTERNATIONAL TRADE COMMISSION ADVICE.

(a) In connection with any proposed trade agreement under chapter 1 or section 123 or 124, the President shall from time to time publish and furnish the International Trade Commission (hereafter in this section referred to as the "Commission") with lists of articles which may be considered for modification or continuance of United States duties, continuance of United States duty-free or excise treatment, or additional duties. In the case of any article with respect to which consideration may be given to reducing or increasing the rate of duty, the list shall specify the provision of this title pursuant to which such consideration may be given.

(b) Within 6 months after receipt of such a list or, in the case of a list submitted in connection with a trade agreement authorized under section 123, within 90 days after receipt of such list, the Commission shall advise the President with respect to each article of its judgment as to the probable economic effect of modifications of duties on industries producing like or directly competitive articles and on consumers, so as to assist the President in making an informed judgment as to the impact which might be caused by such modifications on United States manufacturing, agriculture, mining, fishing, labor, and consumers. Such advice may include in the case of any article the advice of the Commission as to whether any reduction in the rate of duty should take place over a longer period than the minimum periods provided by section 109(a).

(c) In addition, in order to assist the President in his determination of whether to enter into any agreement under section 102, the Commission shall make such investigations and reports as may be requested by the President, including, where feasible, advice as to the probable economic effects of modifications of any barrier to (or other distortion of) international trade on domestic industries and purchasers and on prices and quantities of articles in the United States.

(d) In preparing its advice to the President under this section, the Commission shall, to the extent practicable—

(1) investigate conditions, causes, and effects relating to competition between the foreign industries producing the articles in question and the domestic industries producing the like or directly competitive articles;

(2) analyze the production, trade, and consumption of each like or directly competitive article, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production;

(3) describe the probable nature and extent of any significant change in employment, profit levels, and use of productive facilities, and such other conditions as it deems relevant in the domestic industries concerned which it believes such modifications would cause; and

(4) make special studies (including studies of real wages paid in foreign supplying countries), whenever deemed to be warranted, of particular proposed modifications affecting United States manufacturing, agriculture, mining, fishing, labor, and consumers, utilizing to the fullest extent practicable United States Government facilities abroad and appropriate personnel of the United States.

(e) In preparing its advice to the President under this section, the Commission shall, after reasonable notice, hold public hearings.

SEC. 132. ADVICE FROM DEPARTMENTS AND OTHER SOURCES.

Before any trade agreement is entered into under chapter 1 or section 123 or 124, the President shall seek information and advice with respect to such agreement from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State and the Treasury, from the United States Trade Representative, and from such other sources as he may deem appropriate.

SEC. 133. PUBLIC HEARINGS.

(a) In connection with any proposed trade agreement under chapter 1 or section 123 or 124, the President shall afford an opportunity for any interested person to present his views concerning any article on a list published pursuant to section 131, any article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to such proposed trade agreement. For this purpose, the President shall designate an agency or an interagency committee which shall, after reasonable notice, hold public hearings and prescribe regulations governing the conduct of such hearings.

(b) The organization holding such hearings shall furnish the President with a summary thereof.

SEC. 134. PREREQUISITES FOR OFFERS.

In any negotiations seeking an agreement under chapter 1 or section 123 or 124, the President may make an offer for the modification or continuance of any United States duty, import restrictions, or barriers to (or other distortions of) international trade, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, import restriction, or other barrier to (or other distortion of) international trade, with respect to any article only after he has received a summary of the hearings at which an opportunity to be heard with respect to such article has been afforded under section 133. In addition, the President may make an offer for the modification or continuance of any United States duty, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, with respect to any article included in a list published and furnished under section 131(a), only after he has received advice concerning such article from the International Trade Commission under section 131(b), or after the expiration of the 6-month or 90-day period provided for in that section, as appropriate, whichever first occurs.

SEC. 135. ADVICE FROM PRIVATE OR PUBLIC SECTOR.

(See "Private or Public Sector Advisory Committees")

SEC. 127. RESERVATION OF ARTICLES FOR NATIONAL SECURITY OR OTHER REASONS.

(a) No proclamation shall be made pursuant to the provisions of this Act reducing or eliminating the duty or other import restriction on any article if the President determines that such reduction or elimination would threaten to impair the national security.

(b) While there is in effect with respect to any article any action taken under section 203 of this Act, or section 232 or 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1862 or 1981), the President shall reserve such article from negotiations under this title (and from any action under section 122(c)) contemplating reduction or elimination of—

(A) any duty on such article,

(B) any import restriction imposed under such section, or

(C) any other import restriction, the removal of which will be likely to undermine the effect of the import restrictions referred to in subparagraph (B).

In addition, the President shall also so reserve any other article which he determines to be appropriate, taking into consideration information and advice available pursuant to and with respect to the matters covered by sections 131, 132, and 133, where applicable.

B. MOST-FAVORED-NATION (NONDISCRIMINATORY) TREATMENT

1. MFN Principle

Section 251 of Trade Expansion Act of 1962

[19 U.S.C. 1881, P.L. 87-794]

SEC. 251. MOST-FAVORED-NATION PRINCIPLE.

Except as otherwise provided in this title, in section 350(b) of the Tariff Act of 1930, or in section 401(a) of the Tariff Classification Act of 1962, any duty or other import restriction or duty-free treatment proclaimed in carrying out any trade agreement under this title or section 350 of the Tariff Act of 1930 shall apply to products of all foreign countries, whether imported directly or indirectly.

Section 126(a) of Trade Act of 1974

[19 U.S.C. 2136, P.L. 93-618]

SEC. 126. RECIPROCAL NONDISCRIMINATORY TREATMENT.

(a) Except as otherwise provided in this Act or in any other provision of law, any duty or other import restriction or duty-free treatment proclaimed in carrying out any trade agreement under this title shall apply to products of all foreign countries, whether imported directly or indirectly.

Section 102(f) of Trade Act of 1974

[19 U.S.C. 2112, P.L. 93-618]

SEC. 102. (f) To insure that a foreign country or instrumentality which receives benefits under a trade agreement entered into under this section is subject to the obligations imposed by such agreement, the President may recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agreement apply solely to the parties to such agreement, if such application is consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that the benefits and obligations of such agreement not apply uniformly to all parties to such agreement, if such application is consistent with the terms of such agreement.

2. Communist Countries

General Headnote 3(d), Tariff Schedules of the United States (TSUS)

(d) *Products of Communist Countries.* Notwithstanding any of the foregoing provisions of this headnote, the rates of duty shown in column numbered 2 shall apply to products, whether imported directly or indirectly, of the following countries and areas pursuant to section 401 of the Tariff Classification Act of 1962, to section 231 or 257(e)(2) of the Trade Expansion Act of 1962, or to action taken by the President thereunder or pursuant to Presidential Proclamation 4991, dated October 27, 1982:[1]

Afghanistan[2]
Albania
Bulgaria
Cuba[3]
Czechoslovakia
Estonia
German Democratic Republic and East Berlin
Indochina (any part of Cambodia, Laos, or Vietnam which may be under Communist domination or control)
Korea (any part of which may be under Communist domination or control)
Kurile Islands
Latvia
Lithuania
Outer Mongolia
Polish People's Republic
Southern Sakhalin
Tanna Tuva
Union of Soviet Socialist Republics and the area in East Prussia under the provisional administration of the Union of Soviet Socialist Republics.

Title IV of Trade Act of 1974, as amended

[19 U.S.C. 2431, P.L. 93-618, as amended by P.L. 96-39 and Reorganization Plan No. 3 of 1979]

SEC. 401. EXCEPTION OF THE PRODUCTS OF CERTAIN COUNTRIES OR AREAS.

Except as otherwise provided in this title, the President shall continue to deny nondiscriminatory treatment to the products of any country, the products of which were not eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of the enactment of this Act.

SEC. 402. FREEDOM OF EMIGRATION IN EAST-WEST TRADE.

(a) To assure the continued dedication of the United States to fundamental human rights, and notwithstanding any other provision of law, on or after the date of the enactment of this Act products from any nonmarket economy country shall not be eligible to receive nondiscriminatory treatment (most-favored-nation treatment), such country shall not participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial agreement with any such country, during the period beginning with the date on which the President determines that such country—

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[1] In Proclamation 4697, dated October 23, 1979, the President, acting under authority of section 404(a) of the Trade Act of 1974 (88 Stat. 1978) amended general headnote 3(f) by deleting "China (any part of which may be under Communist domination or control)" and "Tibet", effective February 1, 1980, the date on which written notices of acceptance were exchanged, following adoption on January 24, 1980 by the Congress of a concurrent resolution of approval extending nondiscriminatory treatment to the products of the People's Republic of China.

[2] In Proclamation 5437, effective February 14, 1986, the President suspended most-favored-nation status for Afghanistan, acting under authority of section 118 of Public Law 99-190, approved December 19, 1985.

[3] In Proclamation 3447, dated February 3, 1962, the President, acting under authority of section 620(a) of the Foreign Assistance Act of 1961 (75 Stat. 445), as amended, prohibited the importation into the United States of all goods of Cuban origin and all goods imported from or through Cuba, subject to such exceptions as the Secretary of the Treasury determines to be consistent with the effective operation of the embargo

(1) denies its citizens the right or opportunity to emigrate;

(2) imposes more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose or cause whatsoever; or

(3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice,

and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

(b) After the date of the enactment of this Act, (A) products of a nonmarket economy country may be eligible to receive nondiscriminatory treatment (most-favored-nation treatment), (B) such country may participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and (C) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a). Such report with respect to such country shall include information as to the nature and implementation of emigration laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter so long as such treatment is received, such credits or guarantees are extended, or such agreement is in effect.

(c)(1) During the 18-month period beginning on the date of the enactment of this Act, the President is authorized to waive by Executive order the application of subsections (a) and (b) with respect to any country, if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(2) During any period subsequent to the 18-month period referred to in paragraph (1), the President is authorized to waive by Executive order the application of subsections (a) and (b) with respect to any country, if the waiver authority granted by this subsection continues to apply to such country pursuant to subsection (d), and if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(3) A waiver with respect to any country shall terminate on the day after the waiver authority granted by this subsection ceases to be effective with respect to such country pursuant to subsection (d). The President may, at any time, terminate by Executive order any waiver granted under this subsection.

(d)(1) If the President determines that the extension of the waiver authority granted by subsection (c)(1) will substantially promote the objectives of this section, he may recommend to the Congress that such authority be extended for a period of 12 months. Any such recommendation shall—

(A) be made not later than 30 days before the expiration of such authority:

(B) be made in a document transmitted to the House of Representatives and the Senate setting forth his reasons for recommending the extension of such authority: and

(C) include, for each country with respect to which a waiver granted under subsection (c)(1) is in effect, a determination that continuation of the waiver applicable to that country will substantially promote the objectives of this section, and a statement setting forth his reasons for such determination.

(2) If the President recommends under paragraph (1) the extension of the waiver authority granted by subsection (c)(1), such authority shall continue in effect with respect to any country for a period of 12 months following the end of the 18-month period referred to in subsection (c)(1), if, before the end of such 18-month period, the House of Representatives and the Senate adopt, by an affirmative vote of a majority of the Members present and voting in each House and under the procedures set forth in section 153, a concurrent resolution approving the extension of such authority, and such resolution does not name such country as being excluded from such authority. Such authority shall cease to be effective with respect to any country named in such concurrent resolution on the date of the adoption of such concurrent resolution. If before the end of such 18-month period, a concurrent resolution approving the extension of such authority is not adopted by the House and the Senate, but both the House and Senate vote on the question of final passage of such a concurrent resolution and—

(A) both the House and the Senate fail to pass such a concurrent resolution, the authority granted by subsection (c)(1) shall cease to be effective with respect to all countries at the end of such 18-month period;

(B) both the House and the Senate pass such a concurrent resolution which names such country as being excluded from such authority, such authority shall cease to be effective with respect to such country at the end of such 18-month period; or

(C) one House fails to pass such a concurrent resolution and the other House passes such a concurrent resolution which names such country as being excluded from such authority, such authority shall cease to be effective with respect to such country at the end of such 18-month period.

(3) If the President recommends under paragraph (1) the extension of the waiver authority granted by subsection (c)(1), and at the end of the 18-month period referred to in subsection (c)(1) the House of Representatives and the Senate have not adopted a concurrent resolution approving the extension of such authority and subparagraph (A) of paragraph (2) does not apply, such authority shall continue in effect for a period of 60 days following the end of such 18-month period with respect to any country (except for any country with respect to which such authority was not extended by reason of the application of subparagraph (B) or (C) of paragraph (2)), and shall continue in effect for a period 12 months following the end of such 18-month period with respect to any such country if, before the end of such 60-day period, the House of Representatives and the Senate adopt, by an affirmative vote of a majority of the Members present and voting in each House and under the procedures set forth in section 153, a concurrent resolution approving the extension of such authority, and such resolution does not name such country as being excluded from such authority. Such authority shall cease to be effective with respect to any country named in such concurrent resolution on the date of the adoption of such concurrent resolution. If before the end of such 60-day period, a concurrent resolution approving the extension of such authority is not adopted by the House and Senate, but both the House and Senate vote on the question of final passage of such a concurrent resolution and—

(A) both the House and the Senate fail to pass such a concurrent resolution, the authority granted by subsection (c)(1) shall cease to be effective with respect to all countries on the date of the vote on the question of final passage by the House which votes last;

(B) both the House and the Senate pass such a concurrent resolution which names such country as being excluded from such authority, such authority shall cease to be effective with respect to such country at the end of such 60-day period; or

(C) one House fails to pass such a concurrent resolution and the other House passes such a concurrent resolution which names such country as being excluded from such authority, such authority shall cease to be effective with respect to such country at the end of such 60-day period.

(4) If the President recommends under paragraph (1) the extension of the waiver authority granted by subsection (c)(1), and at the end of the 60-day period referred to in paragraph (3) the House of Representatives and the Senate have not adopted a concurrent resolution approving the extension of such authority and subparagraph (A) of paragraph (3) does not apply, such authority shall continue in effect until the end of the 12-month period following the end of the 18-month period referred to in subsection (c)(1) with respect to any country (except for any country with respect to which such authority was not extended by reason of the application of subparagraph (B) or (C) of paragraph (2) or subparagraph (B) or (C) of paragraph (3)), unless before the end of the 45-day period following such 60-day period either the House of Representatives or the Senate adopts, by an affirmative vote of a majority of the Members present and voting in that House and under the procedures set

forth in section 153, a resolution disapproving the extension of such authority generally or with respect to such country specifically. Such authority shall cease to be effective with respect to all countries on the date of the adoption by either House before the end of such 45-day period of a resolution disapproving the extension of such authority, and shall cease to be effective with respect to any country on the date of the adoption by either House before the end of such 45-day period of a resolution disapproving the extension of such authority with respect to such country.

(5) If the waiver authority granted by subsection (c) has been extended under paragraph (3) or (4) for any country for the 12-month period referred to in such paragraphs, and the President determines that the further extension of such authority will substantially promote the objectives of this section, he may recommend further extensions of such authority for successive 12-month periods. Any such recommendations shall—

(A) be made not later than 30 days before the expiration of such authority;

(B) be made in a document transmitted to the House of Representatives and the Senate setting forth his reasons for recommending the extension of such authority; and

(C) include, for each country with respect to which a waiver granted under subsection (c) is in effect, a determination that continuation of the waiver applicable to that country will substantially promote the objectives of this section, and a statement setting forth his reasons for such determination.

If the President recommends the further extension of such authority, such authority shall continue in effect until the end of the 12-month period following the end of the previous 12-month extension with respect to any country (except for any country with respect to which such authority has not been extended under this subsection), unless before the end of the 60-day period following such previous 12-month extension, either the House of Representatives or the Senate adopts, by an affirmative vote of a majority of the Members present and voting in that House and under the procedures set forth in section 153, a resolution disapproving the extension of such authority generally or with respect to such country specifically. Such authority shall cease to be effective with respect to all countries on the date of the adoption by either House before the end of such 60-day period of a resolution disapproving the extension of such authority, and shall cease to be effective with respect to any country on the date of the adoption by either House before the end of such 60-day period of a resolution disapproving the extension of such authority with respect to such country.

(e) This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of the enactment of this Act.

SEC. 403. UNITED STATES PERSONNEL MISSING IN ACTION IN SOUTHEAST ASIA.

(a) Notwithstanding any other provision of law, if the President determines that a nonmarket economy country is not cooperating with the United States—

(1) to achieve a complete accounting of all United States military and civilian personnel who are missing in action in Southeast Asia,

(2) to repatriate such personnel who are alive, and

(3) to return the remains of such personnel who are dead to the United States,

then, during the period beginning with the date of such determination and ending on the date on which the President determines such country is cooperating with the United States, he may provide that—

(A) the products of such country may not receive nondiscriminatory treatment,

(B) such country may not participate, directly or indirectly, in any program under which the United States extends credit, credit guarantees, or investment guarantees, and

(C) no commercial agreement entered into under this title between such country and the United States will take effect.

(b) This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of the enactment of this Act.

SEC. 404. EXTENSION OF NONDISCRIMINATORY TREATMENT.

(a) Subject to the provisions of section 405(c), the President may by proclamation extend nondiscriminatory treatment to the products of a foreign country which has entered into a bilateral commercial agreement referred to in section 405.

(b) The application of nondiscriminatory treatment shall be limited to the period of effectiveness of the obligations of the United States to such country under such bilateral commercial agreement. In addition, in the case of any foreign country receiving nondiscriminatory treatment pursuant to this title which has entered into an agreement with the United States regarding the settlement of lend-lease reciprocal aid and claims, the application of such nondiscriminatory treatment shall be limited to periods during which such country is not in arrears on its obligations under such agreement.

(c) The President may at any time suspend or withdraw any extension of nondiscriminatory treatment to any country pursuant to subsection (a) and thereby cause all products of such country to be dutiable at the rates set forth in rate column numbered 2 of the Tariff Schedules for the United States.

SEC. 405. AUTHORITY TO ENTER INTO COMMERCIAL AGREEMENTS.

(a) Subject to the provisions of subsections (b) and (c) of this section, the President may authorize the entry into force of bilateral commercial agreements providing nondiscriminatory treatment to the products of countries heretofore denied such treatment whenever he determines that such agreements with such countries will promote the purposes of this Act and are in the national interest.

(b) Any such bilateral commercial agreement shall—

(1) be limited to an initial period specified in the agreement which shall be no more than 3 years from the date the agreement enters into force; except that it may be renewable for additional periods, each not to exceed 3 years; if—

(A) a satisfactory balance of concessions in trade and services has been maintained during the life of such agreement, and

(B) the President determines that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations are satisfactorily reciprocated by the other party to the bilateral agreement;

(2) provide that it is subject to suspension or termination at any time for national security reasons, or that the other provisions of such agreement shall not limit the rights of any party to take any action for the protection of its security interests;

(3) include safeguard arrangements (A) providing for prompt consultations whenever either actual or prospective imports cause or threaten to cause, or significantly contribute to, market disruption and (B) authorizing the imposition of such import restrictions as may be appropriate to prevent such market disruption;

(4) if the other party to the bilateral agreement is not a party to the Paris Convention for the Protection of Industrial Property, provide rights for United States nationals with respect to patents and trademarks in such country not less than the rights specified in such convention;

(5) if the other party to the bilateral agreement is not a party to the Universal Copyright Convention, provide rights for United States nationals with respect to copyrights in such country not less than the rights specified in such convention;

(6) in the case of an agreement entered into or renewed after the date of the enactment of this Act, provide arrangements for the protection of industrial rights and processes;

(7) provide arrangements for the settlement of commercial differences and disputes;

(8) in the case of an agreement entered into or renewed after the date of the enactment of this Act, provide arrangements for the promotion of trade, which may include arrangements for the establishment or expansion of trade and tourist promotion offices, for facilitation of activities of governmental commercial officers, participation in trade fairs and exhibits, and the sending of trade missions, and for facilitation of entry, establishment, and travel of commercial representatives;

(9) provide for consultations for the purpose of reviewing the operation of the agreement and relevant aspects of relations between the United States and the other party; and

(10) provide such other arrangements of a commercial nature as will promote the purposes of this Act.

(c) An agreement referred to in subsection (a), and a proclamation referred to in section 404(a) implementing such agreement, shall take effect only if (1) approved by the Congress by the adoption of a concurrent resolution, referred to in section 151, or (2) in the case of an agreement entered into before the date of the enactment of this Act and a proclamation implementing such agreement, a resolution of disapproval referred to in section 152 is not adopted during the 90-day period specified by section 407(c)(2).

SEC. 406. MARKET DISRUPTION.

[See separate section.]

SEC. 407. PROCEDURE FOR CONGRESSIONAL APPROVAL OR DISAPPROVAL OF EXTENSION OF NONDISCRIMINATORY TREATMENT AND PRESIDENTIAL REPORTS.

(a) Whenever the President issues a proclamation under section 404 extending nondiscriminatory treatment to the products of any foreign country, he shall promptly transmit to the House of Representatives and to the Senate a document setting forth the proclamation and the agreement the proclamation proposes to implement, together with his reasons therefor.

(b) The President shall transmit to the House of Representatives and the Senate a document containing the initial report submitted by him under section 402(b) or 409(b) with respect to a nonmarket economy country. On or before December 31 of each year, the President shall transmit to the House of Representatives and the Senate, a document containing the report required by section 402(b) or 409(b) as the case may be, to be submitted on or before such December 31.

(c)(1) In the case of a document referred to in subsection (a) (other than a document to which paragraph (2) applies), the proclamation set forth therein may become effective and the agreement set forth therein may enter into force and effect only if the House of Representatives and the Senate adopt, by an affirmative vote of a majority of those present and voting in each House, a concurrent resolution of approval (under the procedures set forth in section 151) of the extension of nondiscriminatory treatment to the products of the country concerned.

(2) In the case of a document referred to in subsection (a) which sets forth an agreement entered into before the date of the enactment of this Act and a proclamation implementing such agreement, such proclamation may become effective and such agreement may enter into force and effect after the close of the 90-day period beginning on the day on which such document is delivered to the House of Representatives and to the Senate, unless during such 90-day period either the House of Representatives or the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval (under the procedures set forth in section 152) of the extension of nondiscriminatory treatment to the products of the country concerned.

(3) In the case of a document referred to in subsection (b) which contains a report submitted by the President under section 402(b) or 409(b) with respect to a nonmarket economy country, if, before the close of the 90-day period beginning on the day on which such document is delivered to the House of Representatives and to the Senate, either the House of Representatives or the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval (under the procedures set forth in section 152) of the report submitted by the President with respect to such country, then, beginning with the day after the date of the adoption of such resolution of disapproval, (A) nondiscriminatory treatment shall not be in force with respect to the products of such country, and the products of such country shall be dutiable at the rates set forth in rate column numbered 2 of the

Tariff Schedules of the United States, (B) such country may not participate in any program of the Government of the United States which extends credit or credit guarantees or investment guarantees, and (C) no commercial agreement may thereafter be concluded with such country under this title.

SEC. 408. PAYMENT BY CZECHOSLOVAKIA OF AMOUNTS OWED UNITED STATES CITIZENS AND NATIONALS.

(a) The arrangement initialed on July 5, 1974, with respect to the settlement of the claims of citizens and nationals of the United States against the Government of Czechoslovakia shall be renegotiated and shall be submitted to the Congress as part of any agreement entered into under this title with Czechoslvakia.

(b) The United States shall not release any gold belonging to Czechoslovakia and controlled directly or indirectly by the United States pursuant to the provisions of the Paris Reparations Agreement of January 24, 1946, or otherwise, until such agreement has been approved by the Congress.

SEC. 409. FREEDOM TO EMIGRATE TO JOIN A VERY CLOSE RELATIVE IN THE UNITED STATES.

(a) To assure the continued dedication of the United States to the fundamental human rights and welfare of its own citizens, and notwithstanding any other provision of law, on or after the date of the enactment of this Act, no nonmarket economy country shall participate in any program of the Government of the United States which extends credits or credit guaranteees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial agreement with any such such country, during the period beginning with the date on which the President determines that such country—

(1) denies its citizens the right or opportunity to join permanently through emigration, a very close relative in the United States, such as a spouse, parent, child, brother, or sister;

(2) imposes more than a nominal tax on the visas or other documents required for emigration described in paragraph (1); or

(3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate as described in paragraph (1),

and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

(b) After the date of the enactment of this Act, (A) a nonmarket economy country may participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and (B) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a). Such report with respect to such country shall include information as to the nature and implementation of its laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate to the United States to join close relatives. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each

June 30 and December 31 thereafter, so long as such credits or guarantees are extended or such agreement is in effect.

(c) This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of enactment of this Act.

(d) During any period that a waiver is in effect with respect to any nonmarket economy country under section 402(c), the provisions of subsections (a) and (b) shall not apply with respect to such country.

SEC. 410. EAST-WEST TRADE STATISTICS MONITORING SYSTEM.

The International Trade Commission shall establish and maintain a program to monitor imports of articles into the United States from nonmarket economy countries and exports of articles from the United States to nonmarket economy countries. To the extent feasible, the Commission shall coordinate such program with any relevant data gathering programs presently conducted by the Secretary of Commerce. The Secretary of Commerce shall provide the Commission with any information which, in the determination of the Commission, is necessary to carry out this section. The Commission shall publish a detailed summary of the data collected under the East-West Trade Statistics Monitoring System not less frequently than once each calendar quarter and shall transmit such publication to the East-West Foreign Trade Board and to Congress. Such publication shall include data on the effect of such imports if any, on the production of like, or directly competitive, articles in the United States, and on employment within the industry which produces like, or directly competitive, articles in the United States.

⟦SEC. 411. EAST-WEST FOREIGN TRADE BOARD.⟧

⟦Abolished by section 6 and functions transferred to the President and interagency trade organization by section 5(c) and (e) of Reorganization Plan No. 3 of 1979.⟧

C. TRADE WITH ISRAEL

1. Title IV of Trade and Tariff Act of 1984, as amended

[19 U.S.C. 2112 note, P.L. 98-573, as amended by P.L. 99-47]

[Sec. 401. Amendment of section 102, Trade Act of 1974, relating to negotiation of trade agreements.]

SEC. 402. CRITERIA FOR DUTY-FREE TREATMENT OF ARTICLES.

(a)(1) The reduction or elimination of any duty imposed on any article by the United States provided for in a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 shall apply only if—

(A) that article is the growth, product, or manufacture of Israel or is a new or different article of commerce that has been grown, produced, or manufactured in Israel;

(B) that article is imported directly from Israel into the customs territory of the United States; and

(C) the sum of—

(i) the cost of value of the materials produced in Israel, plus

(ii) the direct costs of processing operations performed in Israel,

is not less than 35 percent of the appraised value of such article at the time it is entered.

If the cost or value of materials produced in the customs territory of the United States is included with respect to an article to which this subsection applies, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (C).

(2) No article may be considered to meet the requirements of paragraph (1)(A) by virtue of having merely undergone—

(A) simple combining or packaging operations; or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(b) As used in this section, the phrase "direct costs of processing operations" includes, but is not limited to—

(1) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

(2) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned, or are not costs of manufacturing the product, such as (A) profit, and (B) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions or expenses.

(c) REGULATIONS.—The Secretary of the Treasury, after consultation with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out this section.

SEC. 403. APPLICATION OF CERTAIN OTHER TRADE LAW PROVISIONS.

(a) SUSPENSION OF DUTY-FREE TREATMENT.—The President may by proclamation suspend the reduction or elimination of any duty provided under any trade agreement provision entered into with Israel under the authority of section 102(b)(1) of the Trade Act of 1974 with respect to any article and may proclaim a duty rate for such article if such action is proclaimed under section 203 of the Trade Act of 1974 or section 232 of the Trade Expansion Act of 1962.

(b) ITC REPORTS.—In any report by the United States International Trade Commission (hereinafter referred to in this title as the "Commission") to the President under section 201(d)(1) of the Trade Act of 1974 regarding any article for which a reduction or elimination of any duty is provided under a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974, the Commission shall state whether and to what extent its findings and recommendations apply to such an article when imported from Israel.

(c) For purposes of subsections (a) and (c) of section 203 of the Trade Act of 1974, the suspension of the reduction or elimination of a duty under subsection (a) shall be treated as an increase in duty.

(d) No proclamation which provides solely for a suspension referred to in subsection (a) with respect to any article shall be made under subsections (a) and (c) of section 203 of the Trade Act of 1974 unless the Commission, in addition to making an affirmative determination with respect to such article under section 201(b) of the Trade Act of 1974, determines in the course of its investigation under that section that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the reduction or elimination of any duty provided under any trade agreement provision entered into with Israel under section 102(b)(1) of the Trade Act of 1974.

(e)(1) Any proclamation issued under section 203 of the Trade Act of 1974 that is in effect when an agreement with Israel is entered into under section 102(b)(1) of the Trade Act of 1974 shall remain in effect until modified or terminated.

(2) If any article is subject to import relief at the time an agreement is entered into with Israel under section 102(b)(1) of the Trade Act of 1974, the President may reduce or terminate the application of such import relief to the importation of such article before the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of subsections (h) and (i) of section 203 of the Trade Act of 1974.

SEC. 404. FAST TRACK PROCEDURES FOR PERISHABLE ARTICLES.

(a) If a petition is filed with the Commission under the provisions of section 201 of the Trade Act of 1974 regarding a perishable product which is subject to any reduction or elimination of a duty imposed by the United States under a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 and alleges injury from imports of that product, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted under subsection (c) with respect to such article.

(b) Within 14 days after the filing of a petition under subsection (a)—

(1) if the Secretary of Agriculture has reason to believe that a perishable product from Israel is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the President and recommend that the President take emergency action; or

(2) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

(c) Within 7 days after the President receives a recommendation from the Secretary of Agriculture to take emergency action under subsection (b), he shall issue a proclamation withdrawing the reduction or elimination of duty provided to the perishable product under any trade agreement provision entered into under section 102(b)(1) of the Trade Act of 1974 or publish a notice of his determination not to take emergency action.

(d) The emergency action provided under subsection (c) shall cease to apply—

(1) upon the proclamation of import relief under section 202(a)(1) of the Trade Act of 1974;

(2) on the day the President makes a determination under section 203(b)(2) of such Act not to impose import relief;

(3) in the event of a report of the Commission containing a negative finding, on the day the Commission's report is submitted to the President; or

(4) whenever the President determines that because of changed circumstances such relief is no longer warranted.

(e) For purposes of this section, the term "perishable product" means any—

(1) live plant provided for in subpart A of part 6 of schedule 1 of the Tariff Schedules of the United States (19 U.S.C. 1202, hereinafter referred to as the "TSUS");

(2) fresh or chilled vegetables provided for in items 135.03 through 138.46 of the TSUS;

(3) fresh mushroom provided for in item 144.10 of the TSUS;

(4) fresh fruit provided for in items 146.10, 146.20, 146.30, 146.50 through 146.62, 146.90, 146.91, 147.03 through 147.44, 147.50 through 149.21, and 149.50 of the TSUS;

(5) fresh cut flower provided for in items 192.17, 192.18, and 192.21 of the TSUS; and

(6) concentrated citrus fruit juice provided for in items 165.25 and 165.35 of the TSUS.

(f) No trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 shall affect fees imposed under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624).

SEC. 405. CONSTRUCTION OF TITLE.

Neither the taking effect of any trade agreement provision entered into with Israel under section 102(b)(1), nor any proclamation issued to implement any such provision, may affect in any manner, or to any extent, the application to any Israeli articles of section 232 of the Trade Expansion Act of 1962, section 337 of title VII of the Tariff Act of 1930, chapter 1 of title II and chapter 1 of title III of the Trade Act of 1974, or any other provision of law under which relief from injury caused by import competition or by unfair import trade practices may be sought.

2. United States-Israel Free Trade Area Implementation Act of 1985

[19 U.S.C. 2112, P.L. 99-47]

AN ACT To approve and implement the Free Trade Area Agreement between the United States and Israel.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States-Israel Free Trade Area Implementation Act of 1985".

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to approve and implement the agreement on the establishment of a free trade area between the United States and Israel negotiated under the authority of section 102 of the Trade Act of 1974;

(2) to strengthen and develop the economic relations between the United States and Israel for their mutual benefit; and

(3) to establish free trade between the two nations through the removal of trade barriers.

SEC 3. APPROVAL OF A FREE TRADE AREA AGREEMENT.

Pursuant to section 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112; 2191), the Congress approves—

(1) the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (hereinafter in this Act referred to as "the Agreement") entered into on April 22, 1985, and submitted to the Congress on April 29, 1985, and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on April 29, 1985.

SEC. 4. PROCLAMATION AUTHORITY.

(a) Tariff Modifications.—Except as provided in subsection (c), the President may proclaim—

(1) such modifications or continuance of any existing duty,

(2) such continuance of existing duty-free or excise treatment, or

(3) such additional duties,

as the President determines to be required or appropriate to carry out the schedule of duty reductions wiht respect to Israel set forth in annex 1 of the Agreement.

(b) ADDITIONAL TARIFF MODIFICATION AUTHORITY.—Except as provided in subsection (c), whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the Agreement, the President may proclaim—

(1) such withdrawal, suspension, modification, or continance of any duty,

(2) such continuance of existing duty-free or excise treatment, or

(3) such additional duties,

as the President determines to be required or appropriate to carry out the Agreement.

(c) EXCEPTION TO AUTHORITY.—No modification of any duty imposed on any article provided for in paragraph (4) of annex 1 of the Agreement that may be proclaimed under subsection (a) or (b) shall take effect prior to January 1, 1995.

SEC. 5. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES LAW.

(a) UNITED STATES STATUTES TO PREVAIL IN CONFLICT.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is in conflict with—

(1) title IV of the Trade and Tariff Act of 1984, or

(2) any other statute of the United States,

shall be given effect under the laws of the United States.

(b) IMPLEMENTING REGULATIONS.—Regulations that are necessary or appropriate to carry out actions proposed in any statement of proposed administrative action submitted to the Congress under section 102 of the Trade Act of 1974 (19 U.S.C. 2112) in order to implement the Agreement shall be prescribed. Initial regulations to carry out such action shall be issued within one year after the date of the entry into force of the Agreement.

(c) CHANGES IN STATUTES TO IMPLEMENT A REQUIREMENT, AMENDMENT, OR RECOMMENDATION.—

(1) Except as otherwise provided in paragraph (2), the provisions of section 3(c) of the Trade Agreements Act of 1979 (19 U.S.C. 2504(c)) shall apply with respect to the Agreement and—

(A) no requirement of, amendment to, or recommendation under the Agreement shall be implemented under United States law, and

(B) no amendment, repeal, or enactment of a statute of the United States to implement any such requirement, amendment, or recommendation shall enter into force with respect to the United States,

unless there has been compliance with the provisions of section 3(c) of the Trade Agreements Act of 1979.

(2) The provisions of section 3(c)(4) of the Trade Agreements Act of 1979 (19 U.S.C. 2504(c)(4)) shall apply to any bill implementing any requirement of, amendment to, or recommendation made under, the Agreement that reduces or eliminates any duty imposed on any article provided for in paragraph (4) of Annex 1 of the Agreement only if—

(A) any reduction of such duty provided in such bill—

(i) takes effect after December 31, 1989, and

(ii) takes effect gradually over the period that begins on January 1, 1990, and ends on December 31, 1994,

(B) any elimination of such duty provided in such bill does not take effect prior to January 1, 1995, and

(C) the consultations required under section 3(c)(1) of such Act occur at least ninety days prior to the date on which such bill is submitted to the Congress under section 3(c) of such Act.

(d) PRIVATE REMEDIES NOT CREATED.—Neither the entry into force of the Agreement with respect to the United States, nor the enactment of this Act, shall be construed as creating any private right of action or remedy for which provision is not explicitly made under this Act or under the laws of the United States.

SEC. 6. TERMINATION.

The provisions of section 125(a) of the Trade Act of 1974 (19 U.S.C. 2135(a)) shall not apply to the Agreement.

[SEC. 7. Amendment of section 308(4) of Trade Agreements Act of 1979 relating to government procurement.]

[SEC. 8. Technical amendments of title IV of Trade and Tariff Act of 1984 and sections 102(b)(3) and Title V of Trade Act of 1974.]

Chapter 14: ORGANIZATION OF TRADE POLICY FUNCTIONS

A. CONGRESS

1. Congressional Liaison and Reports

Sections 161-163 of Trade Act of 1974, as amended

[19 U.S.C. 2211, P.L. 93-618, as amended by P.L. 96-39 and Reorganization Plan No. 3 of 1979]

SEC. 161. CONGRESSIONAL DELEGATES TO NEGOTIATIONS.

(a) At the beginning of each regular session of Congress, the Speaker of the House of Representatives, upon the recommendation of the chairman of the Committee on Ways and Means, shall select five members (not more than three of whom are members of the same political party) of such committee, and the President pro tempore of the Senate, upon the recommendation of the chairman of the Committee on Finance, shall select five members (not more than three of whom are members of the same political party) of such committee, who shall be accredited by the President as official advisers to the United States delegations to international conferences, meetings, and negotiation sessions relating to trade agreements.

(b)(1) The United States Trade Representative shall keep each official adviser currently informed on United States negotiating objectives, the status of negotiations in progress, and the nature of any changes in domestic law or the administration thereof which may be recommended to Congress to carry out any trade agreement or any requirement of, amendment to, or recommendation under, such agreement.

(2) The chairmen of the Committee on Ways and Means and the Committee on Finance may designate members (in addition to the official advisors under subsection (a)) and staff members of their respective committees who shall have access to the information provided to official advisers under paragraph (1).

SEC. 162. TRANSMISSION OF AGREEMENTS TO CONGRESS.

(a) As soon as practicable, after a trade agreement entered into under chapter 1 or section 123 or 124 has entered into force with respect to the United States, the President shall, if he has not previously done so, transmit a copy of such trade agreement to each House of the Congress together with a statement, in the light of the advice of the International Trade Commission under section 131(b), if any, and of other relevant considerations, of his reasons for entering into the agreement.

(b) The President shall transmit to each Member of the Congress a summary of the information required to be transmitted to each House under subsection (a). For purposes of this subsection, the term "Member" includes any Delegate or Resident Commissioner.

SEC. 163. REPORTS.

(a) The President shall submit to the Congress an annual report on the trade agreements program and on import relief and adjustment assistance for workers, firms, and communities under this Act. Such report shall include information regarding new negotiations; changes made in duties and nontariff barriers and other distortions of trade of the United States; reciprocal concessions obtained; changes in trade agreements (including the incorporation therein of actions taken for import relief and compensation provided therefor); extension or withdrawal of nondiscriminatory treatment by the United States with respect to the products of a foreign country; extension, modification, withdrawal, suspension, or limitation of preferential treatment to exports of developing countries; the results of action taken to obtain removal of foreign trade restrictions (including discriminatory restrictions) against United States exports and the removal of foreign practices which discriminate against United States service industries (including transportation and tourism) and investment; and the measures being taken to seek the removal of other significant foreign import restrictions; and other information relating to the trade agreements program and to the agreements entered into thereunder. Such report shall also include information regarding the number of applications filed for adjustment assistance for workers, firms, and communities, the number of such applications which were approved, and the extent to which adjustment assistance has been provided under such approved applications.

(b) The International Trade Commission shall submit to the Congress, at least once a year, a factual report on the operation of the trade agreements program.

2. Congressional Procedures With Respect to Presidential Actions

Section 151–154 of Trade Act of 1974, as amended

[19 U.S.C. 2191, P.L. 93-618, as amended by P.L. 96-39 and P.L. 98-573]

SEC. 151. BILLS IMPLEMENTING TRADE AGREEMENTS ON NONTARIFF BARRIERS AND RESOLUTIONS APPROVING COMMERCIAL AGREEMENTS WITH COMMUNIST COUNTRIES.

(a) Rules of House of Representatives and Senate.—This section and sections 152 and 153 are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of implementing bills described in subsection (b)(1), implementing revenue bills described in subsection (b)(2), approval resolutions described in subsection (b)(3), and resolutions described in subsections 152(a) and 153(a); and they supersede other rules only to the extend that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) DEFINITIONS.—For purposes of this section—

(1) The term "implementing bill" means only a bill of either House of Congress which is introduced as provided in subsection (c) with respect to one or more trade agreements submitted to the House of Representatives and the Senate under section 102 and which contains—

(A) a provision approving such trade agreement or agreements,

(B) a provision approving the statement of administrative action (if any) proposed to implement such trade agreement or agreements, and

(C) if changes in existing laws or new statutory authority is required to implement such trade agreement or agreements, provisions, necessary or appropriate to implement such trade agreement or agreements, either repealing or amending existing laws or providing new statutory authority.

(2) The term "implementing revenue bill" means an implementing bill which contains one or more revenue measures by reason of which it must originate in the House of Representatives.

(3) The term "approval resolution" means only a concurrent resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress approves the extension of nondiscriminatory treatment with respect to the products of ——— transmitted by the President to the Congress on———.", the first blank space being filled with the name of the country involved and the second blank space being filled with the appropriate date.

(c) INTRODUCTION AND REFERRAL.—

(1) On the day on which a trade agreement is submitted to the House of Representatives and the Senate under section 102, the implementing bill submitted by the President with respect to such trade agreement shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a trade agreement is submitted, the implementing bill shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. Such bills shall be referred by the Presiding Officers of the respective Houses to the appropriate committee, or, in the case of a bill containing provisions within the jurisdiction of two or more committees, jointly to such committees for consideration of those provisions within their respective jurisdictions.

(2) On the day on which a bilateral commercial agreement, entered into under title IV of this Act after the date of the enactment of this Act, is transmitted to the House of Representatives and the Senate, an approval resolution with respect to

such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement is transmitted, the approval resolution with respect to such agreement shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. The approval resolution introduced in the House shall be referred to the Committee on Ways and Means and the approval resolution introduced in the Senate shall be referred to the Committee on Finance.

(d) Amendments Prohibited.—No amendment to an implementing bill or approval resolution shall be in order in either the House of Representatives or the Senate; and no motion to suspend the application of this subsection shall be in order in either House, nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this subsection by unanimous consent.

(e) Period for Committee and Floor Consideration.—

(1) Except as provided in paragraph (2), if the committee or committees of either House to which an implementing bill or approval resolution has been referred have not reported it at the close of the 45th day after its introduction, such committee or committees shall be automatically discharged from further consideration of the bill or resolution and it shall be placed on the appropriate calendar. A vote on final passage of the bill or resolution shall be taken in each House on or before the close of the 15th day after the bill or resolution is reported by the committee or committees of that House to which it was referred, or after such committee or committees have been discharged from further consideration of the bill or resolution. If prior to the passage by one House of an implementing bill or approval resolution of that House, that House receives the same implementing bill or approval resolution from the other House, then—

(A) the procedure in that House shall be the same as if no implementing bill or approval resolution had been received from the other House; but

(B) the vote on final passage shall be on the implementing bill or approval resolution of the other House.

(2) The provisions of paragraph (1) shall not apply in the Senate to an implementing revenue bill. An implementing revenue bill received from the House shall be referred to the appropriate committee or committees of the Senate. If such committee or committees have not reported such bill at the close of the 15th day after its receipt by the Senate (or, if later, before the close of the 45th day after the corresponding implementing revenue bill was introduced in the Senate), such committee or committees shall be automatically discharged from further

consideration of such bill and it shall be placed on the calendar. A vote on final passage of such bill shall be taken in the Senate on or before the close of the 15th day after such bill is reported by the committee or committees of the Senate to which it was referred, or after such committee or committees have been discharged from further consideration of such bill.

(3) For purposes of paragraphs (1) and (2), in computing a number of days in either House, there shall be excluded any day on which that House is not in session.

(f) FLOOR CONSIDERATION IN THE HOUSE.—

(1) A motion in the House of Representatives to proceed to the consideration of an implementing bill or approval resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the House of Representatives on an implementing bill or approval resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the bill or resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit an implementing bill or approval resolution or to move to reconsider the vote by which an implementing bill or approval resolution is agreed to or disagreed to.

(3) Motions to postpone, made in the House of Representatives with respect to the consideration of an implementing bill or approval resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to an implementing bill or approval resolution shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of an implementing bill or approval resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(g) FLOOR CONSIDERATION IN THE SENATE.—

(1) A motion in the Senate to proceed to the consideration of an implementing bill or approval resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the Senate on an implementing, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any debatable motion or appeal in connection with an implementing bill or approval resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or resolution, except that in the event the manager of the bill or resolution is in favor of any such motion or appeal, the

time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of the, may, from time under their control on the passage of an implementing bill or approval resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(4) A motion in the Senate to further limit debate is not debatable. A motion to recommit an implementing bill or approval resolution is not in order.

SEC. 152. RESOLUTIONS DISAPPROVING CERTAIN ACTIONS.

(a) Contents of Resolution.—

(1) For purposes of this section, the term "resolution" means only—

(A) a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve the action taken by, or the determination of the President under section 203 of the Trade Act of 1974 transmitted to the Congress on———.", the blank space being filled with the appropriate date; and

(B) a resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That the ——— does not approve ——— transmitted to the Congress on————.", with the first blank space being filled with the name of the resolving House, the second blank space being filled in accordance with paragraph (2), and the third blank space being filled with the appropriate date.

(2) The second blank space referred to in paragraph (1)(B) shall be filled as follows:

(A) in the case of a resolution referred to in section 303(e) of the Tariff Act of 1930, with the phrase "the determination of the Secretary of the Treasury under section 303(d) of the Tariff Act of 1930";

(B) in the case of a resolution referred to in section 407(c)(2), with the phrase "the extension of nondiscriminatory treatment with respect to the products of ———" (with this blank space being filled with the name of the country involved); and

(C) in the case of a resolution referred to in section 407(c)(3), with the phrase "the report of the President submitted under section ——— of the Trade Act of 1974 with respect to ———" (with the first blank space being filled with "402(b)" or "409(b)", as appropriate, and the second blank space being filled with the name of the country involved).

(b) Reference to Committees.—All resolutions introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all resolutions introduced in the Senate shall be referred to the Committee on Finance.

(c) Discharge of Committees.—

(1) If the committee of either House to which a resolution has been referred has not reported it at the end of 30 days

after its introduction, not counting any day which is excluded under section 154(b), it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution introduced with respect to the same matter, except no motion to discharge shall be in order after the committee has reported a resolution with respect to the same matter.

(2) A motion to discharge under paragraph (1) may be made only by an individual favoring the resolution, and is highly privileged in the House and privileged in the Senate; and debate thereon shall be limited to not more than 1 hour, the time to be divided in the House equally between those favoring and those opposing the resolution, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(d) Floor Consideration in the House.—

(1) A motion in the House of Representatives to proceed to the consideration of a resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the House of Representatives on a resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to move to reconsider the vote by which a resolution is agreed to or disagreed to.

(3) Motions to postpone, made in the House of Representatives with respect to the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a resolution shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of a resolution in the House of Representatives shall be governed by the Rules of the House of Representatives applicable to other resolutions in similar circumstances.

(e) Floor Consideration in the Senate.—

(1) A motion in the Senate to proceed to the consideration of a resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the Senate on a resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours, to be equally divided between, and

controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any debatable motion or appeal in connection with a resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(4) A motion in the Senate to further limit debate on a resolution, debatable motion, or appeal is not debatable. No amendment to, or motion to recommit, a resolution is in order in the Senate.

(f) SPECIAL RULE FOR CONCURRENT RESOLUTIONS.—In the case of a resolution described in subsection (a)(1), if prior to the passage by one House of a resolution of that House, that House receives a resolution with respect to the same matter from the other House, then—

(1) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(2) the vote on final passage shall be on the resolution of the other House.

SEC. 153. RESOLUTIONS RELATING TO EXTENSION OF WAIVER AUTHORITY UNDER SECTION 402.

(a) CONTENTS OF RESOLUTIONS.—For purposes of this section, the term "resolution" means only—

(1) a concurrent resolution of the two House of the Congress, the matter after the resolving clause of which is as follows: "That the Congress approves the extension of the authority contained in section 402(c)(1) of the Trade Act of 1974 recommended by the President to the Congress on ———, except with respect to ———.", with the first blank space being filled with the appropriate date and the second blank space being filled with the names of those countries, if any, with respect to which such extension of authority is not approved, and with the except clause being omitted if there is not such country; and

(2) a resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That the ——— does not approve the extension of the authority contained in section 402(c) of the Trade Act of 1974 recommended by the President to the Congress on ——— with respect to ———.", with the first blank space being filled with the name of the resolving House, the second blank space being filled with the appropriate date, and the third blank space being filled with the names of those countries, if any, with respect to which such extension of authority is not approved, and with the with-respect-to clause being omitted if the extension of the authority is not approved with respect to any country.

(b) APPLICATION OF RULES OF SECTION 152; EXCEPTIONS.—

(1) Except as provided in this section, the provisions of section 152 shall apply to resolutions described in subsection (a).

(2) In applying section 152(c)(1), all calendar days shall be counted, and, in the case of a resolution related to section 402(d)(4), 20 calendar days shall be substituted for 30 days.

(3) That part of section 152(d)(2) which provides that no amendment is in order shall not apply to any amendment to a resolution which is limited to striking out or inserting the names of one or more countries or to striking our or inserting an except clause, in the case of a resolution described in subsection (a)(1), or a with-respect-to clause, in the case of a resolution described in subsection (a)(2). Debate in the House of Representatives on any amendment to a resolution shall be limited to not more than 1 hour which shall be equally divided between those favoring and those opposing the amendment. A motion in the House to further limit debate on an amendment to a resolution is not debatable.

(4) That part of section 152(e)(4) which provides that no amendment is in order shall not apply to any amendment to a resolution which is limited to striking out or inserting the names of one or more countries or to striking out or inserting an except clause, in the case of a resolution described in subsection (a)(1), or a with-respect-to clause, in the case of a resolution described in subsection (a)(2). The time limit on a debate on a resolution in the Senate under section 152(e)(2) shall include all amendments to a resolution. Debate in the Senate on any amendment to a resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such amendment, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and minority leader may, from time under their control on the passage of a resolution, allot additional time to any Senator during the consideration of any amendment. A motion in the Senate to further limit debate on an amendment to a resolution is not debatable.

(c) Consideration of Second Resolution Not in Order.—It shall not be in order in either the House of Representatives or the Senate to consider a resolution with respect to a recommendation of the President under section 402(d) (other than a resolution described in subsection (a)(1) received from the other House), if that House has adopted a resolution with respect to the same recommendation.

SEC. 154. SPECIAL RULES RELATING TO CONGRESSIONAL PROCEDURES.

(a) Whenever, pursuant to section 102(e), 203(b), 402(d), or 407 (a) or (b), or section 303(e) of the Tariff Act of 1930, a document is required to be transmitted to the Congress, copies of such document shall be delivered to both Houses of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(b) For purposes of sections 203(c), 407(c)(2), and 407(c)(3), the 90-day period referred to in such sections shall be computed by excluding—

(1) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(2) any Saturday and Sunday, not excluded under paragraph (1), when either House is not in session.

3. Approval of Certain Trade Agreements and Relationship of Trade Agreements to U.S. Law

Sections 2(a) and 3(c) of Trade Agreements Act of 1979

[19 U.S.C. 2503, 2504, P.L. 96-39]

SEC. 2. APPROVAL OF TRADE AGREEMENTS.

(a) APPROVAL OF AGREEMENTS AND STATEMENTS OF ADMINISTRATIVE ACTION.—In accordance with the provisions of sections 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112 and 2191), the Congress approves the trade agreements described in subsection (c) submitted to the Congress on June 19, 1979, and the statements of administrative action proposed to implement such trade agreements submitted to the Congress on that date.

SEC. 3. RELATIONSHIP OF TRADE AGREEMENTS TO UNITED STATES LAW.

(c) CHANGES IN STATUTES TO IMPLEMENT A REQUIREMENT, AMENDMENT, OR RECOMMENDATION.—

(1) PRESIDENTIAL DETERMINATION.—Whenever the President determines that it is necessary or appropriate to amend, repeal, or enact a statute of the United States in order to implement any requirement of, amendment to, or recommendation under such an agreement, he shall submit to the Congress a draft of a bill to accomplish the amendment, repeal, or enactment and a statement of any administrative action proposed to implement the requirement, amendment, or recommendation. Not less than 30 days before submitting such a bill, the President shall consult with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and each committee of the House or Senate which has jurisdiction over legislation involving subject matters which would be affected by such amendment, repeal, or enactment. The consultation shall treat all matters relating to the implementation of such requirement, amendment, or recommendation, as provided in paragraphs (2) and (3).

(2) CONDITIONS FOR TAKING EFFECT UNDER UNITED STATES LAW.—No such amendment shall enter into force with respect to the United States, and no such requirement, amendment, or recommendation shall be implemented under United States law, unless—

(A) the President, after consultation with the Congress under paragraph (1), notifies the House of Representatives and the Senate of his determination and publishes notice of that determination in the Federal Register,

(B) the President transmits a document to the House of Representatives and to the Senate containing a copy of the text of such requirement, amendment, or recommendation, together with—

(i) a draft of a bill to amend or repeal provisions of existing statutes or to create statutory authority and an explanation as to how the bill and any proposed administrative action affect existing law, and

(ii) a statement of how the requirement, amendment, or recommendation serves the interests of United States commerce and why the legislative and administrative action is necessary or appropriate to carry out the requirement, amendment, or recommendation, and

(C) the bill submitted by the President is enacted into law.

(3) Recommendations as to application.—The President may make the same type of recommendations, in the same manner and subject to the same conditions, to the Congress with respect to the application of any such requirement, amendment, or recommendation as he may make, under section 102(f) of the Trade Act of 1974, with respect to a trade agreement.

(4) Congressional procedures applicable.—The bill submitted by the President shall be introduced in accordance with the provisions of subsection (c)(1) of section 151 of the Trade Act of 1974, and the provisions of subsections (d), (e), (f), and (g) of such section shall apply to the consideration of the bill. For the purpose of applying section 151 of such Act to such bill—

(A) the term "trade agreement" shall be treated as a reference to the requirement, amendment, or recommendation, and

(B) the term "implementing bill" or "implementing revenue bill", whichever is appropriate, shall be treated as a reference to the bill submitted by the President.

B. EXECUTIVE BRANCH

1. Interagency Trade Organization

Section 242, Trade Expansion Act of 1962, as amended

[19 U.S.C. 1872, P.L. 87-794, as amended by P.L. 93-618, P.L. 96-39, and Reorganization Plan No. 3 of 1979]

SEC. 242. INTERAGENCY TRADE ORGANIZATION.

(a) The President shall establish an interagency organization to assist him in carrying out the functions vested in him by this title and sections 201, 202, and 203 of the Trade Act of 1974. Such organization shall, in addition to the United States Trade Representative, be composed of the heads of such departments and of such other officers as the President shall designate. It shall meet at such times and with respect to such matters as the President or the chairman of the organization shall direct. The organization may invite the participation in its activities of any agency not represented in the organization when matters of interest to such agency are under consideration.

(b) In assisting the President, the organization shall—

(1) make recommendations to the President on basic policy issues arising in the administration of the trade agreements program,

(2) make recommendations to the President as to what action, if any, he should take on reports submitted to him by the United States International Trade Commission under section 201(d) of the Trade Act of 1974,

(3) advise the President of the results of hearings held pursuant to section 302(b)(2) of the Trade Act of 1974, and recommend appropriate action with respect thereto, and

(4) perform such other functions with respect to the trade agreements program as the President may from time to time designate.

(c) The organization shall, to the maximum extent practicable, draw upon the resources of the agencies represented in the organization, as well as such other agencies as it may determine, including the United States International Trade Commission. In addition, the President may establish by regulation such procedures and committees as he may determine to be necessary to enable the organization to provide for the conduct of hearings pursuant to section 302(b)(2) of the Trade Act of 1974, and for the carrying out of other functions assigned to the organization pursuant to this section.

Reorganization Plan No. 3 of 1979

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, September 25, 1979, pursuant to the provisions of chapter 9 of title 5 of the United States Code, as amended by P.L. 97-377.

Reorganization of Functions Relating to International Trade

SEC. 1. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.

(a) The Office of the Special Representative for Trade Negotiations is redesignated the Office of the United States Trade Representative.

(b)(1) The Special Representative for Trade Negotiations is redesignated the United States Trade Representative (hereinafter referred to as the "Trade Representative"). The Trade Representative shall have primary responsibility, with the advice of the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) (hereinafter referred to as the "Committee"), for developing, and for coordinating the implementation of, United States international trade policy, including commodity matters and, to the extent they are related to international trade policy, direct investment matters. The Trade Representative shall serve as the principal advisor to the President on international trade policy and shall advise the President on the impact of other policies of the United States Government on international trade.

(2) The Trade Representative shall have lead responsibility for the conduct of international trade negotiations, including commodity and direct investment negotiations in which the United States participates.

(3) To the extent necessary to assure the coordination of international trade policy, and consistent with any other law, the Trade Representative, with the advice of the Committee, shall issue policy guidance to departments and agencies on basic issues of policy and interpretation arising in the exercise of the following international trade functions. Such guidance shall determine the policy of the United States with respect to international trade issues arising in the exercise of such functions:

(A) matters concerning the General Agreement on Tariffs and Trade, including implementation of the trade agreements set forth in section 2(c) of the Trade Agreements Act of 1979; United States Government positions on trade and commodity matters dealt with by the Organization for Economic Cooperation and Development, the United Nations Conference on Trade and Development, and other multilateral organizations; and the assertion and protection of the rights of the United States under bilateral and multilateral international trade and commodity agreements;

(B) expansion of exports from the United States;

(C) policy research on international trade, commodity, and direct investment matters;

(D) to the extent permitted by law, overall United States policy with regard to unfair trade practices, including enforcement of countervailing duties and antidumping functions under section 303 and title VII of the Tariff Act of 1930:

(E) bilateral trade and commodity issues, including East-West trade matters;

(F) international trade issues involving energy.

(4) All functions of the Trade Representative shall be conducted under the direction of the President.

(c) The Deputy Special Representatives for Trade Negotiations are redesignated Deputy United States Trade Representatives.

SEC. 2. DEPARTMENT OF COMMERCE.

(a) The Secretary of Commerce [hereinafter referred to as the "Secretary") shall have, in addition to any other functions assigned by law, general operational responsibility for major nonagricultural international trade functions of the United States Government, including export development, commercial representation abroad, the administration of the antidumping and countervailing duty laws, export controls, trade adjustment assistance to firms and communities, research and analysis, and monitoring compliance with international trade agreements to which the United States is a party.

(b)(1) There shall be in the Department of Commerce (hereinafter referred to as the "Department") a Deputy Secretary appointed by the President, by and with the advice and consent of the Senate. The Deputy Secretary shall receive compensation at the rate payable for Level II of the Executive Schedule, and shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.

(2) The position of Under Secretary of Commerce established under section 1 of the Act of June 5, 1939 (ch. 180, 53 Stat. 808; 15 U.S.C. 1502) is abolished.

(c) There shall be in the Department an Under Secretary for International Trade appointed by the President, by and with the advice and consent of the Senate. The Under Secretary for International Trade shall receive compensation at the rate payable for Level III of the Executive Schedule, and shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.

(d) There shall be in the Department two additional Assistant Secretaries appointed by the President, by and with the advice and consent of the Senate. Each such Assistant Secretary shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.

(e) There shall be in the Department of Commerce a Director General of the United States and Foreign Commercial Services who shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate prescribed by law for level IV of the Executive Schedule.

SEC. 3. EXPORT-IMPORT BANK OF THE UNITED STATES.

The Trade Representative and the Secretary shall serve, ex officio and without vote, as additional members of the Board of Directors of the Export-Import Bank of the United States.

SEC. 4. OVERSEAS PRIVATE INVESTMENT CORPORATION.

(a) The Trade Representative shall serve, ex officio, as an additional voting member of the Board of Directors of the Overseas Private Investment Corporation. The Trade Representative shall be the Vice Chair of such Board.

(b) There shall be an additional member of the Board of Directors of the Overseas Private Investment Corporation who shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and who shall not be an official or employee of the Government of the United States. Such Director shall be appointed for a term of no more than three years.

SEC. 5. TRANSFER OF FUNCTIONS.

(a)(1) There are transferred to the Secretary all functions of the Secretary of the Treasury, the General Counsel of the Department of the Treasury, or the Department of the Treasury pursuant to the following:

(A) section 305(b) of the Trade Agreements Act of 1979 (19 U.S.C. 215(b)), to be exercised in consultation with the Secretary of the Treasury;

(B) section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862);

(C) section 303 and title VII (including section 771(1)) of the Tariff Act of 1930 (19 U.S.C. 1303, 1671 *et seq.*), except that the Customs Service of the Department of the Treasury shall accept such deposits, bonds, or other security as deemed appropriate by the Secretary, shall assess and collect such duties as may be directed by the Secretary, and shall furnish such of its important records or copies thereof as may be requested by the Secretary incident to the functions transferred by this subparagraph;

(D) sections 514, 515, and 516 of the Tariff Act of 1930 (19 U.S.C. 1514, 1515, and 1516) insofar as they relate to any protest, petition, or notice of desire to contest described in section 1002(b)(1) of the Trade Agreements Act of 1979;

(E) with respect to the functions transferred by subparagraph (C) of this paragraph, section 318 of the Tariff Act of 1930 (19 U.S.C. 1318), to be exercised in consultation with the Secretary of the Treasury;

(F) with respect to the functions transferred by subparagraph (C) of this paragraph, section 502(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b)), and, insofar as it provides authority to issue regulations and disseminate information, to be exercised in consultation with the Secretary of the Treasury to the extent that the Secretary of the Treasury has responsibility under subparagraph (C), section 502(a) of such Act (19 U.S.C. 1502(a));

(G) with respect to the functions transferred by subparagraph (C) of this paragraph, section 617 of the Tariff Act of 1930 (19 U.S.C. 1617); and

(H) section 2632(e) of title 28 of the United States Code, insofar as it relates to actions taken by the Secretary reviewable under section 516A of the Tariff Act of 1930 (19 U.S.C. 1516(a)).

(2) The Secretary shall consult with the Trade Representative regularly in exercising the functions transferred by subparagraph (C) of paragraph (1) of this subsection, and shall consult with the

Trade Representative regarding any substantive regulation proposed to be issued to enforce such functions.

(b)(1) There are transferred to the Secretary all trade promotion and commercial functions of the Secretary of State or the Department of State that are—

(A) performed in full-time overseas trade promotion and commercial positions; or

(B) performed in such countries as the President may from time to time prescribe.

(2) To carry out the functions transferred by paragraph (1) of this subsection, the President, to the extent he deems it necessary, may authorize the Secretary to utilize Foreign Service personnel authorities and to exercise the functions vested in the Secretary of State by the Foreign Service Act of 1946 (22 U.S.C. 801 *et seq.*) and by any other laws with respect to personnel performing such functions.

(c) There are transferred to the President all functions of the East-West Foreign Trade Board under section 411(c) of the Trade Act of 1974 (19 U.S.C. 2441(c)).

(d) Appropriations available to the Department of State for Fiscal Year 1980 for representation of the United States concerning matters arising under the General Agreement on Tariffs and Trade and trade and commodity matters dealt with under the auspices of the United Nations Conference on Trade and Development are transferred to the Trade Representative.

(e) There are transferred to the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) all functions of the East-West Foreign Trade Board under section 411 (a) and (b) of the Trade Act of 1974 (19 U.S.C. 2441(a) and (b)).

SEC. 6. ABOLITION.

The East-West Foreign Trade Board established under section 411 of the Trade Act of 1974 (19 U.S.C. 2441) is abolished.

SEC. 7. RESPONSIBILITY OF THE SECRETARY OF STATE.

Nothing in this reorganization plan is intended to derogate from the responsibility of the Secreatary of State for advising the President on foreign policy matters, including the foreign policy aspects of international trade and trade related matters.

SEC. 8. INCIDENTAL TRANSFERS; INTERIM OFFICERS.

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held available or to be made available in connection with the functions transferred under this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the appropriate agency, organization, or component at such time or times as such Director shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation originally was made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agency abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of the reorganization plan.

(b) Pending the assumption of office by the initial officers provided for in section 2 of this reorganization plan, the functions of each such office may be performed, for up to a total of 60 days, by such individuals as the President may designate. Any individual so designated shall be compensated at the rate provided herein for such position.

SEC. 9. EFFECTIVE DATE.

The provisions of this reorganization plan shall take effect October 1, 1980, or at such earlier time or times as the President shall specify, but not sooner than the earliest time allowable under section 906 of title 5 of the United States Code.

Section 306(c)(1) of Trade and Tariff Act of 1984

[19 U.S.C. 2114c, P.L. 98–573]

SEC. 306. PROVISIONS RELATING TO INTERNATIONAL TRADE IN SERVICES.

[(a); (b) Establishment of service industries development program by Secretary of Commerce; amendments of International Investment Survey Act of 1976.]

(c)(1)(A) The United States Trade Representative, through the interagency trade organization established pursuant to section 242(a) of the Trade Expansion Act of 1962 or any subcommittee thereof, shall, in conformance with this Act and other provisions of law, develop (and coordinate the implementation of) United States policies concerning trade in services.

(B) In order to encourage effective development, coordination, and implementation of United States policies on trade in services—

(i) each department or agency of the United States responsible for the regulation of any service sector industry shall, as appropriate, advise and work with the United States Trade Representative concerning matters that have come to the department's or agency's attention with respect to—

(I) the treatment afforded United States service sector interest in foreign markets; or

(II) allegations of unfair practices by foreign governments or companies in a service sector; and

(ii) the Department of Commerce, together with other appropriate agencies as requested by the United States Trade Representative, shall provide staff support and other assistance for negotiations on service-related issues by the United States Trade Representatives and the domestic implementation of service-related agreements.

(C) Nothing in this paragraph shall be construed to alter any existing authority or responsibility with respect to any specific service sector.

2. Office of the United States Trade Representative

Section 141 of Trade Act of 1974, as amended*

[19 U.S.C. 2171, P.L. 93-618, as amended by Reorganization Plan No. 3 of 1979, P.L. 97-456, P.L. 98-573, P.L. 99-272, and P.L. 99-514]

SEC. 141. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.

(a) There is established within the Executive Office of the President the Office of the United States Trade Representative (hereinafter in this section referred to as the "Office").

(b)(1) The Office shall be headed by the United States Trade Representative who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of the United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. The United States Trade Representative shall hold office at the pleasure of the President, shall be entitled to receive the same allowances as a chief of mission, and shall have the rank of Ambassador Extraordinary and Plenipotentiary.

(2) There shall be in the Office three Deputy United States Trade Representatives who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of a Deputy United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. Each Deputy United States Trade Representative shall hold office at the pleasure of the President and shall have the rank of Ambassador.

[(3) Conforming amendments to title 5, United States Code.]

(c)(1) The United States Trade Representative shall—

(A) be the chief representative of the United States for each trade negotiation under this subchapter or section 2411 of this title;

(B) report directly to the President and the Congress, and be responsible to the President and the Congress for the administration of trade agreements programs under this chapter, the Trade Expansion Act of 1962, and section 1351 of this title;

(C) advise the President and Congress with respect to nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements program;

(D) be responsible for making reports to Congress with respect to the matter set forth in subparagraphs (A) and (B);

(E) be chairman of the interagency trade organization established pursuant to section 242(a) of the Trade Expansion Act of 1962; and

(F) be responsible for such other functions as the President may direct.

(2) The United States Trade Representative may—

(A) delegate any of his functions, powers, and duties to such officers and employees of the Office as he may designate; and

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*Section 241, Trade Expansion Act of 1962 (P.L. 87-794), was repealed by P.L. 93-618.

(B) authorize such successive redelegations of such functions, powers, and duties to such officers and employees of the Office as he may deem appropriate.

(3) Each Deputy United State Trade Representative shall have as his principal function the conduct of trade negotiations under this chapter and shall have such other functions as the United States Trade Representative may direct.

(d) The United States Trade Representative may, for the purpose of carrying out his functions under this section—

(1) subject to the civil service and classification laws, select, appoint, employ, and fix the compensation of such officers and employees as are necessary and prescribe their authority and duties, except that not more than 20 individuals may be employed without regard to any provision of law regulating the employment or compensation at rates not to exceed the rate of pay for level IV of the Executive schedule in section 5314 of title 5, United States Code;

(2) employ experts and consultants in accordance with section 3109 of Title 5 and compensate individuals so employed for each day (including traveltime) at rates not in excess of the maximum rate of pay for grade GS–18 as provided in section 5332 of Title 5, and while such experts and consultants are so serving away from their homes or regular place of business, to pay such employees travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of Title 5 for persons in Government service employed intermittently;

(3) promulgate such rules and regulations as may be necessary to carry out the functions, powers and duties vested in him;

(4) utilize, with their consent, the services, personnel, and facilities of other Federal agencies;

(5) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the work of the Office and on such terms as the United States Trade Representative may deem appropriate, with any agency or instrumentality of the United States, or with any public or private person, firm, association, corporation, or institution;

(6) accept voluntary and uncompensated services, nothwithstanding the provisions of 1342 of title 31, United States Code;

(7) adopt an official seal, which shall be judicially noticed;

(8) pay for expenses approved by him for official travel without regard to the Federal Travel Regulations or to the provisions of subchapter I of chapter 57 of Title 5 [5 U.S.C. § 5701 et seq.] (relating to rates of per diem allowances in lieu of subsistence expenses);

(9) accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Office;

(10) acquire, by purchase or exchange, not more than two passenger motor vehicles for use abroad, except that no vehicle may be acquired at a cost exceeding $9,500; and

(11) provide, where authorized by law, copies of documents to persons at cost, except that any funds so received shall be cred-

ited to, and be available for use from, the account from which expenditures relating thereto were made.

(e) The United States Trade Representative shall, to the extent he deems it necessary for the proper administration and execution of the trade agreements programs of the United States, draw upon the resources of, and consult with, Federal agencies in connection with the performance of his functions.

(f)(1) There are authorized to be appropriated to the Office for the purpose of carrying out its functions $13,582,000 for fiscal year 1986; of which not to exceed $80,000 may be used for entertainment and representation expenses.

(2) For the fiscal year beginning October 1, 1982, and for each fiscal year thereafter, there are authorized to be appropriated to the Office for the salaries of its officers and employees such additional sums as may be provided by law to reflect pay rate changes made in accordance with the Federal Pay Comparability Act of 1970 [5 U.S.C. § 5301 et seq.].

C. UNITED STATES INTERNATIONAL TRADE COMMISSION

1. Organization, General Powers, Procedures

Sections 330, 331, 333–335, and 339 of Tariff Act of 1930, as amended

[19 U.S.C. 1330, P.L. 71-361, as amended by Act of June 25, 1936, Act of June 25, 1948, Act of May 24, 1949, Act of Aug. 7, 1953, P.L. 85-686, P.L. 91-452, P.L. 93-618, P.L. 94-455, P.L. 95-106, P.L. 95-430, P.L. 97-456, P.L. 98-573, and P.L. 99-272]

SEC. 330. ORGANIZATION OF COMMISSION.

(a) Membership.—The United States International Trade Commission (referred to in this Act as the "Commission") shall be composed of six commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. No person shall be eligible for appointment as a commissioner unless he is a citizen of the United States, and, in the judgment of the President, is possessed of qualifications requisite for developing expert knowledge of international trade problems and efficiency in administering the duties and functions of the Commission. A person who has served as a commissioner for more than 5 years (excluding service as a commissioner before January 3, 1975) shall not be eligible for reappointment as a commissioner. Not more than three of the commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable.

(b) Terms of Office.—The terms of office of the commissioners holding office on January 3, 1975, which (but for this sentence) would expire on June 16, 1975, June 16, 1976, June 16, 1977, June 16, 1978, June 16, 1979, and June 16, 1980, shall expire on December 16, 1976, June 16, 1978, December 16, 1979, June 16, 1981, December 16, 1982, and June 16, 1984, respectively. The term of office of each commissioner appointed after such date shall expire 9 years from the date of the expiration of the term for which his predecessor was appointed, except that—

(1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and

(2) any commissioner may continue to serve as a commissioner after an expiration of his term of office until his successor is appointed and qualified.

(c) Chairman and Vice Chairman; Quorum.—(1) The chairman and the vice chairman of the Commission shall be designated by the President from among the members of the Commission not ineligible, under paragraph (3), for designation. The President shall notify the Congress of his designations under this paragraph.

(2) After June 16, 1978, the terms of office for the chairman and vice chairman of the Commission shall be as follows:

(A) The first term of office occurring after such date shall begin on June 17, 1978, and end at the close of June 16, 1980.

(B) Each term of office thereafter shall begin on the day after the closing date of the immediately preceding term of office and end at the close of the 2-year period beginning on such day.

(3)(A) The President may not designate as the chairman of the Commission for any term—

(i) either of the two commissioners most recently appointed to the Commission as of the beginning date of the term of office for which the designation of chairman is to be made; or

(ii) any commissioner who is a member of the political party of which the chairman of the Commission for the immediately preceding term is a member.

(B) The President may not designate as the vice chairman of the Commission for any term any commissioner who is a member of the political party of which the chairman for that term is a member.

(C) If any commissioner does not complete a term as chairman or vice chairman by reason of death, resignation, removal from office as a commissioner, or expiration of his term of office as a commissioner, the President shall designate as the chairman or vice chairman, as the case may be, for the remainder of such term a commissioner who is a member of the same political party. Designation of a chairman under this subparagraph may be made without regard to the limitation set forth in subparagraph (A)(i).

(4) The vice chairman shall act as chairman in case of the absence or disability of the chairman. During any period in which there is no chairman or vice chairman, the commissioner having the longest period of continuous service as a commissioner shall act as chairman.

(5) No commissioner shall actively engage in any business, vocation, or employment other than that of serving as a commissioner.

(6) A majority of the commissioners in office shall constitute a quorum, but the Commission may function notwithstanding vacancies.

(d) EFFECT OF DIVIDED VOTE IN CERTAIN CASES.—(1) In a proceeding in which the Commission is required to determine—

(A) under section 201 of the Trade Act of 1974, whether increased imports of an article are a substantial cause of serious injury, or the threat thereof, as described in subsection (b)(1) of that section (hereafter in this subsection referred to as "serious injury"), or

(B) under section 406 of such Act, whether market disruption exists,

and the commissioners voting are equally divided with respect to such determination, then the determination agreed upon by either group of commissioners may be considered by the President as the determination of the Commission.

(2) If under section 201 or 406 of the Trade Act of 1974 there is an affirmative determination of the Commission, or a determination of the Commission which the President may consider an af-

firmative determination under paragraph (1), that serious injury or market disruption exists, respectively, and a majority of the commissioners voting are unable to agree on a finding or recommendation described in section 201(d)(1) of such Act or the finding described in section 406(a)(3) of such Act, as the case may be (hereafter in this subsection referred to as a "remedy finding"), then—

(A) if a plurality of not less than three commissioners so voting agree on a remedy finding, such remedy finding shall, for purposes of sections 202 and 203 of such Act, be treated as the remedy finding of the Commission, or

(B) if two groups, both of which include not less than 3 commissioners, each agree upon a remedy finding and the President reports under section 203(b) of such Act that—

(i) he is taking the action agreed upon by one such group, then the remedy finding agreed upon by the other group shall, for purposes of sections 202 and 203 of such Act, be treated as the remedy finding of the Commission, or

(ii) he is taking action which differs from the action agreed upon by both such groups, or that he will not take any action, then the remedy finding agreed upon by either such group may be considered by the Congress as the remedy finding of the Commission and shall, for purposes of sections 202 and 203 of such Act, be treated as the remedy finding of the Commission.

(3) In any proceeding to which paragraph (1) applies in which the commissioners voting are equally divided on a determination that serious injury exists, or that market disruption exists, the Commission shall report to the President the determination of each group of commissioners. In any proceeding to which paragraph (2) applies, the Commission shall report to the President the remedy finding of each group of commissioners voting.

(4) In a case to which paragraph (2)(B)(ii) applies, for purposes of section 203(c)(1) of the Trade Act of 1974, notwithstanding section 152(a)(1)(A) of such Act, the second blank space in the concurrent resolution described in such section 152 shall be filled with the appropriate date and the following: "The action which shall take effect under section 203(c)(1) of the Trade Act of 1974 is the finding or recommendation agreed upon by Commissioners ————, ————, and ————." The three blank spaces shall be filled with the names of the appropriate Commissioners.

(5) Whenever, in any case in which the Commission is authorized to make an investigation upon its own motion, upon complaint, or upon application of any interested party, one-half of the number of commissioners voting agree that the investigation should be made, such investigation shall thereupon be carried out in accordance with the statutory authority covering the matter in question. Whenever the Commission is authorized to hold hearings in the course of any investigation and one-half of the number of commissioners voting agree that hearings should be held such hearings shall thereupon be held in accordance with the statutory authority covering the matter in question.

(e) AUTHORIZATION OF APPROPRIATIONS.—(1) For the fiscal year beginning October 1, 1976, and each fiscal year thereafter, there are authorized to be appropriated to the Commission only such sums as may hereafter be provided by law.

(2) There are authorized to be appropriated to the Commission for necessary expenses (including the rental of conference rooms in the District of Columbia and elsewhere) for fiscal year 1986 not to exceed $28,901,000; of which not to exceed $2,500 may be used, subject to approval by the Chairman of the Commission, for reception and entertainment expenses. No part of any sum that is appropriated under the authority of this paragraph may be used by the Commission for the making of any special study, investigation, or report that is requested by any agency of the executive branch unless that agency reimburses the Commission for the cost thereof.

(3) There are authorized to be appropriated to the Commission for each fiscal year after September 30, 1977, in addition to any other amount authorized to be appropriated for such fiscal year, such sums as may be necessary for increases authorized by law in salary, pay, retirement, and other employee benefits.

SEC. 331. GENERAL POWERS.

(a) ADMINISTRATION.—(1) Except as provided in paragraph (2), the chairman of the Commission shall—

(A) appoint and fix the compensation of such employees of the Commission as he deems necessary (other than the personal staff of each commissioner), including the secretary,

(B) procure the services of experts and consultants in accordance with the provisions of section 3109 of Title 5, and

(C) exercise and be responsible for all other administrative functions of the Commission.

Any decision by the chairman under this paragraph shall be subject to disapproval by a majority vote of all the commissioners in office.

(2) Subject to approval by a majority vote of all the commissioners in office, the chairman may—

(A) terminate the employment of any supervisory employee of the Commission whose duties involve substantial personal responsibility for Commission matters and who is compensated at a rate equal to, or in excess of, the rate for grade GS-15 of the General Schedule in section 5332 of title 5, and

(B) formulate the annual budget of the Commission.

(3) No member of the Commission, in making public statements with respect to any policy matter for which the Commission has responsibility, shall represent himself as speaking for the Commission, or his views as being the views of the Commission, with respect to such matter except to the extent that the Commission has adopted the policy being expressed.

(b) APPLICATION OF CIVIL SERVICE LAW.—Except for employees excepted under civil service rules, all employees of the Commission shall be appointed from lists of eligibles to be supplied by the Director of the Office of Personnel Management and in accordance with the civil service law.

(c) EXPENSES.—All of the expenses of the Commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders in making any investigation or upon official business in any other places than at their respective headquarters, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman (except that in the case of a commissioner, or the personal staff of any commissioner, such vouchers may be approved by that commissioner).

(d) PRINCIPAL OFFICE AT WASHINGTON.—The principal office of the Commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The Commission may, by one or more of its members, or by such agents as it may designate, prosecute any inquiry necessary to its duties in any part of the United States or in any foreign country.

(e) OFFICE AT NEW YORK.—The Commission is authorized to establish and maintain an office at the port of New York for the purpose of directing or carrying on any investigation, receiving and compiling statistics, selecting, describing, and filing samples of articles, and performing any of the duties or exercising any of the powers imposed upon it by law.

(f) OFFICIAL SEAL.—The Commission is authorized to adopt an official seal, which shall be judicially noticed.

SEC. 333. TESTIMONY AND PRODUCTION OF PAPERS.

(a) AUTHORITY TO OBTAIN INFORMATION.—For the purposes of carrying out its functions and duties in connection with any investigation authorized by law, the Commission or its duly authorized agent or agents (1) shall have access to and the right to copy any document, paper, or record, pertinent to the subject matter under investigation, in the possession of any person, firm, copartnership, corporation, or association engaged in the production, importation, or distribution of any article under investigation, (2) may summon witnesses, take testimony, and administer oaths, (3) may require any person, firm, copartnership, corporation, or association to produce books or papers relating to any matter pertaining to such investigation, and (4) may require any person, firm, copartnership, corporation, or association, to furnish in writing, in such detail and in such form as the Commission may prescribe, information in their possession pertaining to such investigation. Any member of the Commission may sign subpoenas, and members and agents of the Commission, when authorized by the Commission, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(b) WITNESSES AND EVIDENCE.—Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place of hearing. And in case of disobedience to a subpoena the Commission may invoke the aid of any district or territorial court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the Commission, or to produce documentary evidence if so ordered or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) MANDAMUS.—At the request of the Commission, any such court shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this part or any order of the Commission made in pursuance thereof.

(d) DEPOSITIONS.—The Commission may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person, firm, copartnership, corporation, or association, may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided.

(e) FEES AND MILEAGE OF WITNESSES.—Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same, except employees of the Commission, shall severally be entitled to the same fees and mileage as are paid for like services in the courts of the United States.

(f) STATEMENTS UNDER OATH.—The Commission is authorized, in order to ascertain any facts required by subdivision (d) of section 332 to require any importer and any American grower, producer, manufacturer, or seller to file with the commission a statement, under oath, giving his selling prices in the United States of any article imported, grown, produced, fabricated, manipulated, or manufactured by him.

(g) REPRESENTATION IN COURT PROCEEDINGS.—The Commission shall be represented in all judicial proceedings by attorneys who are employees of the Commission or, at the request of the Commission, by the Attorney General of the United States.

SEC. 334. COOPERATION WITH OTHER AGENCIES.

The Commission shall in appropriate matters act in conjunction and cooperation with the Treasury Department, the Department of Commerce, the Federal Trade Commission, or any other departments, or independent establishments of the Government, and such departments and independent establishments of the Government shall cooperate fully with the Commission for the purposes of aiding and assisting in its work, and, when directed by the President, shall furnish to the Commission, on its request, all records, papers, and information in their possession relating to any of the subjects of investigation by the Commission and shall detail, from time to time, such officials and employees to said Commission as he may direct.

SEC. 335. RULES AND REGULATIONS.

The Commission is authorized to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties.

SEC. 339. TRADE REMEDY ASSISTANCE OFFICE.

(a) There is established in the Commission a Trade Remedy Assistance Office which shall provide full information to the public, upon request, concerning—

(1) remedies and benefits available under the trade laws, and

(2) the petition and application procedures, and the appropriate filing dates, with respect to such remedies and benefits.

(b) Each agency responsible for administering a trade law shall provide technical assistance to eligible small businesses to enable them to prepare and file petitions and applications (other than those which, in the opinion of the agency, are frivolous) to obtain the remedies and benefits that may be available under that law.

(c) For purposes of this section—

(1) The term "eligible small business" means any business concern which, in the agency's judgment, due to its small size, has neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and filing petitions and applications for remedies and benefits under trade laws. In determining whether a business concern is an "eligible small business", the agency may consult with the Small Business Administration, and shall consult with any other agency that has provided assistance under subsection (b) to that business concern. An agency decision regarding whether a business concern is an eligible small business for purposes of this section is not reviewable by any other agency or by any court.

(2) The term "trade laws" means—

(A) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq., relating to relief caused by import competition);

(B) chapters 2 and 3 of such title II (relating to adjustment assistance for workers and firms);

(C) chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq., relating to relief from foreign import restrictions and export subsidies);

(D) title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq., relating to the imposition of countervailing duties and antidumping duties);

(E) section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, relating to the safeguarding of national security); and

(F) section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, relating to unfair practices in import trade).

Section 603 of Trade Act of 1974

[19 U.S.C. 2482, P.L. 93-618]

SEC. 603. INTERNATIONAL TRADE COMMISSION.

(a) In order to expedite the performance of its functions under this Act, the International Trade Commission may conduct preliminary investigations, determine the scope and manner of its proceedings, and consolidate proceedings before it.

(b) In performing its functions under this Act, the Commission may exercise any authority granted to it under any other Act.

(c) The Commission shall at all times keep informed concerning the operation and effect of provisions relating to duties or other import restrictions of the United States contained in trade agreements entered into under the trade agreements program.

Section 175 (a)(1) of Trade Act of 1974

[19 U.S.C. 2232, P.L. 93-618]

SEC. 175. INDEPENDENT BUDGET AND AUTHORIZATION OF APPROPRIATIONS.

(a)(1) Effective with respect to the fiscal year beginning October 1, 1976, for purposes of the Budget and Accounting Act, 1921 (31 U.S.C. 1 et seq.), estimated expenditures and proposed appropriations for the United States International Trade Commission shall be transmitted to the President on or before October 15 of the year preceding the beginning of each fiscal year and shall be included by him in the Budget without revision, and the Commission shall not be considered to be a department or establishment for purposes of such Act.

2. Investigations

Section 332 of Tariff Act of 1930, as amended

[19 U.S.C. 1332, P.L. 71-361, as amended by P.L. 93-618 and P.L. 96-39]

SEC. 332. INVESTIGATIONS.

(a) INVESTIGATIONS AND REPORTS.—It shall be the duty of the Commission to investigate the administration and fiscal and industrial effects of the customs laws of this country, the relations between the rates of duty on raw materials and finished or partly finished products, the effects of ad valorem and specific duties and of compound specific and ad valorem duties, all questions relative to the arrangement of schedules and classification of articles in the several schedules of the customs law, and, in general, to investigate the operation of customs laws, including their relation to the Federal revenues, their effect upon the industries and labor of the country, and to submit reports of its invesitgations as hereafter provided.

(b) INVESTIGATIONS OF TARIFF RELATIONS.—The Commission shall have power to investigate the tariff relations between the United States and foreign countries, commercial treaties, preferential provisions, economic alliances, the effect of export bounties and preferential transportation rates, the volume of importations compared with domestic production and consumption, and conditions, causes, and effects relating to competition of foreign industries with those of the United States, including dumping and cost of production.

(c) INVESTIGATION OF PARIS ECONOMY PACT.—The Commission shall have power to investigate the Paris Economy Pact and similar organizations and arrangements in Europe.

(d) INFORMATION FOR PRESIDENT AND CONGRESS.—In order that the President and the Congress may secure information and assistance, it shall be the duty of the Commission to—

(1) Ascertain conversion costs and costs of production in the principal growing, producing, or manufacturing centers of the

United States of articles of the United States, whenever in the opinion of the Commission it is practicable;

(2) Ascertain conversion costs and costs of production in the principal growing, producing, or manufacturing centers of foreign countries of articles imported into the United States, whenever in the opinion of the Commission such conversion costs or costs of production are necessary for comparison with conversion costs or costs of production in the United States and can be reasonably ascertained;

(3) Select and describe articles which are representative of the classes or kinds of articles imported into the United States and which are similar to or comparable with articles of the United States; select and describe articles of the United States similar to or comparable with such imported articles; and obtain and file samples of articles so selected, whenever the Commission deems it advisable;

(4) Ascertain imports costs of such representative articles so selected;

(5) Ascertain the grower's producer's, or manufacturer's selling prices in the principal growing, producing, or manufacturing centers of the United States of the articles of the United States so selected; and

(6) Ascertain all other facts which will show the differences in or which affect competition between articles of the United States and imported articles in the principal markets of the United States.

(e) DEFINITIONS.—When used in this subdivision and in subdivision (d)—

(1) The term "article" includes any commodity, whether grown, produced, fabricated, manipulated, or manufactured;

(2) The term "import cost" means the transaction value of the imported merchandise determined in accordance with section 402(b) plus, when not included in the transaction value, all necessary expenses, exclusive of customs duties, of bringing such merchandise to the United States.

[(f) Provision directing the Commission to ascertain the cost of crude petroleum during 3 years preceding 1930 has been executed.]

(g) REPORTS TO PRESIDENT AND CONGRESS.—The Commission shall put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, whenever requested, all information at its command, and shall make such investigations and reports as may be requested by the President or by either of said committees or by either branch of the Congress, and shall report to Congress on the first Monday of December of each year after June 17, 1930, a statement of the methods adopted and all expenses incurred, a summary of all reports made during the year, and a list of all votes taken by the Commission during the year, showing those commissioners voting in the affirmative and the negative on each vote and those commissioners not voting on each vote and the reasons for not voting. Each such annual report shall include a list of all complaints filed under section 337 during the year for which such report is being made, the date on which each such complaint was filed, and the action taken thereon, and the status of all investigations conducted by the Commission under such section during such year and the date on which each such investigation was commenced.

3. Uniform Statistical Data

Section 484(e) of Tariff Act of 1930, as amended

[19 U.S.C. 1484(e), P.L. 71-361, as amended by P.L. 93-618 and P.L. 95-106]

SEC. 484. ENTRY OF MERCHANDISE.

(e) Statistical Enumeration.—The Secretary of the Treasury, the Secretary of Commerce, and the United States International Trade Commission are authorized and directed to establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production, and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

Section 608 of Trade Act of 1974

[19 U.S.C. 1484 note, P.L. 93-618]

SEC. 608. UNIFORM STATISTICAL DATA ON IMPORTS, EXPORTS, AND PRODUCTION.

[(a) Amendment of section 484(e) of Tariff Act of 1930 relating to statistical enumeration.]

(b) In carrying out the responsibilities under section 484(e), Tariff Act of 1930 and other pertinent statutes, the Secretary of Commerce and the United States International Trade Commission shall conduct jointly a study of existing commodity classification systems with a view to identifying the appropriate principles and concepts which should guide the organization and development of an enumeration of articles which would result in comparability of United States import, production, and export data. The Secretary and the United States International Trade Commission shall submit a report to both Houses of Congress and to the President with respect to such study no later than August 1, 1975.

(c) In further connection with its responsibilities pursuant to subsections (a) and (b), the United States International Trade Commission shall undertake an investigation under section 332(g) of the Tariff Act of 1930 which would provide the basis for—

(1) a report on the appropriate concepts and principles which should underlie the formulation of an international commodity code adaptable for modernized tariff nomenclature purposes and for recording, handling, and reporting of transactions in national and international trade, taking into account how such a code could meet the needs of sound customs and trade report-

ing practices reflecting the interests of United States and other countries, such report to be submitted to both Houses of Congress and to the President as soon as feasible, but in any event, no later than June 1, 1975; and

(2) full and immediate participation by the United States International Trade Commission in the United States contribution to technical work of the Harmonized Systems Committee under the Customs Cooperation Council to assure the recognition of the needs of the United States business community in the development of a Harmonized Code reflecting sound principles of commodity identification and specification and modern producing methods and trading practices,

and, in carrying out such responsibilities, the Commission shall report to both Houses of Congress and to the President, as it deems appropriate.

(d) The President is requested to direct the appropriate agencies to cooperate fully with the Secretary of Commerce and the United States International Trade Commission in carrying out their responsibilities under subsections (a), (b), and (c).

(e) The amendment made by subsection (a) insofar as it relates to export declarations shall take effect on January 1, 1976.

D. PRIVATE OR PUBLIC SECTOR ADVISORY COMMITTEES

Section 135 of Trade Act of 1974, as amended

[19 U.S.C. 2155, P.L. 93-618, as amended by P.L. 96-39, P.L. 98-573, and P.L. 99-514]

SEC. 135. ADVICE FROM PRIVATE OR PUBLIC SECTOR.

(a) The President shall seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to negotiating objectives and bargaining positions before entering into a trade agreement referred to in section 101 or 102, with respect to the operation of any trade agreement once entered into, and with respect to other matters arising in connection with the administration of the trade policy of the United States.

(b)(1) The President shall establish an Advisory Committee for Trade Negotiations to provide overall policy advice on matters referred to in subsection (a). The Committee shall be composed of not more than 45 individuals, and shall include representatives of government, labor, industry, agriculture, small business, service industries, retailers, consumer interests, and the general public.

(2) The Committee shall meet at the call of the United States Trade Representative. The Chairman of the Committee shall be elected by the Committee from among its members. Members of the Committee shall be appointed by the President for a period of 2 years and may be reappointed for one or more additional periods.

(3) The United States Trade Representative shall make available to the Committee such staff, information, personnel, and administrative services and assistance as it may reasonably require to carry out its activities.

(c)(1) The President may, on his own initiative, or at the request of organizations representing industry, labor, agriculture, or services, establish general policy advisory committees for industry, labor, agriculture, or services, respectively, to provide general policy advice on matters referred to in subsection (a). Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, and service interests, respectively, including small business interests, and shall be organized by the United States Trade Representative and the Secretary of Commerce, Labor, or Agriculture, as appropriate.

(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretary of Commerce, Labor, or Agriculture, as appropriate, (A) shall consult with interested private organizations, and (B) shall take into

account such factors as patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade, the character of the nontariff barriers and other distortions affecting such competition, the necessity for reasonable limits on the number of such advisory committees, the necessity that each committee be reasonably limited in size, and that, in the case of each sectoral committee, the product lines covered by each committee be reasonably related.

(3) The President—

(A) may establish policy advisory committees representing non-Federal governmental interests to provide, where the President finds it necessary, policy advice—

(i) on matters referred to in subsection (a), and

(ii) with respect to implementation of trade agreements and

(B) shall include as members of committees established under subparagraph (A) representatives of non-Federal governmental interests if he finds such inclusion appropriate after consultation by the United States Trade Representative with such representatives.

(d) Committees established under subsection (c) shall meet at the call of the United States Trade Representative and the Secretary of Agriculture, Commerce, or Labor, as appropriate, to provide policy advice, technical advice and information, and advice on other factors relevant to the matters referred to in subsection (a).

(e) The Advisory Committee for Trade Negotiations, each appropriate policy advisory committee, and each sector or functional advisory committee, if the sector or area which such committee represents is affected, shall meet at the conclusion of negotiations for each trade agreement entered into under this Act, to provide to the President, to Congress, and to the United States Trade Representative a report on such agreement. The report of the Advisory Committee for Trade Negotiations and each appropriate policy advisory committee shall include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and the report of the appropriate sector or functional area committee shall include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sector or within the functional area.

(f) The provisions of the Federal Advisory Committee Act (Public Law 92-463) shall apply—

(1) to the Advisory Committee for Trade Negotiations established pursuant to subsection (b); and

(2) to all other advisory committees which may be established pursuant to subsection (c); except that the meetings of advisory committees established under subsection (c) shall be exempt from the requirements of subsections (a) and (b) of section 10 and section 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or his designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiat-

ing objectives or bargaining positions with respect to matters referred to is subsection (a).

(g)(1)(A) Trade secrets and commerical or financial information which is privileged or confidential, submitted in confidence by the private or non-Federal government sector to officers or employees of the United States in connection with trade negotiations, shall not be disclosed to any person other than to—

(i) officers and employees of the United States designated by the United States Trade Representative, and

(ii) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are accredited as official advisers under section 161 (a) or are designated by the chairman of either such committee under section 161(b)(2), and members of the staff of either such committee designated by the chairman under section 161(b)(2),

for use in connection with ~~negotiation of matters~~ referred to in subsection (a).

(B) Information, other than that described in paragraph (A), and advice submitted in confidence by the private or non-Federal government sector to officers or employees of the United States, to the Advisory Committee for Trade Negotiations or to any advisory committee established under subsection (c), in connection with matters referred to in subsection (a), shall not be disclosed to any person other than—

(i) the individuals described in subparagraph (A), and

(ii) the appropriate advisory committees established under this section.

(2) Information submitted in confidence by officers or employees of the United States to the Advisory Committee for Trade Negotiations, or to any advisory committee established under subsection (c), shall not be disclosed other than in accordance with rules issued by the United States Trade Representative and the Secretary of Commerce, Labor or Agriculture, as appropriate, after consultation with the relevant advisory committees established under subsection (c). Such rules shall define the categories of information which require restricted or confidential handling by such committee considering the extent to which public disclosure of such information can reasonably be expected to prejudice United States negotiating objectives. Such rules shall, to the maximum extent feasible, permit meaningful consultations by advisory committee members with persons affected by matters referred to in subsection (a).

(h) The United States Trade Representative, and the Secretary of Commerce, Labor, or Agriculture, as appropriate, shall provide such staff, information, personnel, and administrative services and assistance to advisory committees established pursuant to subsection (c) as such committees may reasonably require to carry out their activities.

(i) It shall be the responsibility of the United States Trade Representative, in conjunction with the Secretary of Commerce, Labor, or Agriculture, as appropriate, to adopt procedures for consultation with and obtaining information and advice from the advisory committees established pursuant to subsection (c) on a continuing and timely basis. Such consultation shall include the provision of information to each advisory committee as to (1) significant issues and developments, and (2) overall negotiating objectives and positions of the United States and other parties with respect to matters referred to in subsection (a). The United States Trade Representative shall not be bound by the advice or recommendations of such advisory committees but the United States Trade Representative shall inform the advisory committees of failures to accept such advice or recommendations, and the President shall include in his statement to the Congress, required by section 163, a report by the United States Trade Representative on consultation with such committees, issues involved in such consultation, and the reasons for not accepting advice or recommendations.

(j) In addition to any advisory committee established pursuant to this section, the President shall provide adequate, timely and continuing opportunity for the submission on an informal and, if such information is submitted under the provisions of subsection (g), confidential basis by private or non-Federal government organizations or groups, representing government, labor, industry, agriculture, small business, service industries, consumer interests, and others, of statistics, data, and other trade information, as well as policy recommendations, pertinent to the negotiation of any matters referred to in subsection (a).

(k) Nothing contained in this section shall be construed to authorize or permit any individual to participate directly in any negotiation of any matters referred to in subsection (a). To the maximum extent practicable, the members of the committees established under subsections (b) and (c), and other appropriate parties, shall be informed and consulted before and during any such negotiations and may be permitted to participate in international meetings to the extent the head of the United States delegation deems appropriate, but may not speak or negotiate for the United States.

(l) The provisions of title XVIII of the Food and Agriculture Act of 1977 shall not apply to an advisory committee established under subsection (c).

(m) NON-FEDERAL GOVERNMENT DEFINED.—The term "non-Federal government" means—

(1) any State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof, or

(2) any agency or instrumentality of any entity described in paragraph (1).

Section 306(c)(2)(A) of Trade and Tariff Act of 1984

[19 U.S.C.—, P.L. 98-573]

SEC. 306. PROVISIONS RELATING TO INTERNATIONAL TRADE IN SERVICES.

[(c)(1) Addition to authority of U.S. Trade Representative and "Inter-agency Trade Organization" on trade in services.]

(2)(A) The President shall, as he deems appropriate—

(i) consult with State governments on issues of trade policy, including negotiating objectives and implementation of trade agreements, affecting the regulatory authority of non-Federal governments, or their procurement of goods and services;

(ii) establish one or more intergovernmental policy advisory committees on trade which shall serve as a principal forum in which State and local governments may consult with the Federal Government with respect to the matters described in clause (i); and

(iii) provide to State and local governments and to United States service industries, upon their request, advice, assistance, and (except as may be otherwise prohibited by law) data, analyses, and information concerning United States policies on international trade in services.

APPENDIX

STATUTORY CITATIONS OF MAJOR U.S. TRADE LAWS[1]

Agricultural Act of 1956

Public Law 84–540, ch. 327, approved May 28, 1956, 70 Stat. 188, codified as amended at various sections of titles 7 and 16.

Conference Report on H.R. 10875, Report No. 2197; H.R. 10875 reported from House Agriculture Committee, April 30, 1956, House Report 84–2077; H.R. 10875 reported from Senate Committee on Agriculture and Forestry, May 11, 1956, Senate Report 84–1966.

Agricultural Adjustment Act of 1933

Act of May 12, 1933, ch. 25, 48 Stat. 31, 7 U.S.C. 601 *et seq.*

H.R. 3835 reported from House Agriculture Committee, March 20, 1933, House Report 73–6; H.R. 3835 reported from Senate Committee on Agriculture and Forestry, April 5, 1933, Senate Report 73–16, and Senate Committee on Banking and Currency, April 21, 1933, Senate Report 73–40.

Caribbean Basin Economic Recovery Act

Public Law 98–67, title II, approved August 5, 1983, 97 Stat. 384, 19 U.S.C. 2701 *et seq.*

Title II of Conference Report on H.R. 2973, House Report 98–325; H.R. 2769 reported from House Committee on Ways and Means, June 24, 1983, House Report 98–226; H.R. 2769 reported from Senate Committee on Finance, October 29, 1983, Senate Report No. 98–285.

Comprehensive Anti-Apartheid Act of 1986

Public Law 99–440, approved October 2, 1986, 100 Stat. 1086, 22 U.S.C. 5001.

H.R. 4868 reported from House Committee on Foreign Affairs and House Committee on Ways and Means, House Report 99–638, pts. I and II; S. 2701 reported from Senate Committee on Foreign Relations, Senate Report 99–370.

Export Administration Act of 1979

Public Law 96–72, approved September 29, 1979, 93 Stat. 503, 50 App. U.S.C. 2401–2420.

Conference Report on S. 737, House Report 96–482; S. 737 passed House in lieu of H.R. 4034, September 25, 1979 (*see*

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[1] Does not includes subsequent amendments to these laws.

House Report 96-200 on H.R. 4034); S. 737 reported from Senate Banking, Housing, and Urban Affairs Committee, May 15, 1979, Senate Report 96-169.

Export Trading Company Act of 1982

Public Law 97-290, approved October 8, 1982, 96 Stat. 1233, 15 U.S.C. 4001-4003, 12 U.S.C. 1841-1843, 15 U.S.C. 4011-4021.

Conference Report on S. 734, House Report 97-924; S. 734 passed House in lieu of H.R. 1799 and H.R. 6016, July 27, 1982 (*see* House Report 97-637 on H.R. 1799 and House Report 97-629 on H.R. 6016); S. 734 reported from Senate Banking, Housing, and Urban Affairs Committee, March 18, 1981, Senate Report 97-27.

Foreign Corrupt Practices Act of 1977

Public Law 95-213, title I, approved December 19, 1977, 91 Stat. 1494, 15 U.S.C. 78a-78ff.

Conference Report on S. 305, House Report 95-831; S. 305 passed House November 1, 1977 (no committee report); S. 305 reported from Senate Banking, Housing, and Urban Affairs Committee, May 2, 1977, Senate Report 95-114.

Generalized System of Preferences Renewal Act of 1984

Public Law 98-573, title V, approved October 30, 1984.

Title V of Conference Report on H.R. 3398, House Report 98-1156; H.R. 6023 reported from House Committee on Ways and Means, September 27, 1984, House Report 98-1090; S. 1718 reported from Senate Committee on Finance, May 24, 1984, Senate Report 98-485.

International Emergency Economic Powers Act

Public Law 95-223, title II, approved December 28, 1977, 91 Stat. 1626, 50 U.S.C. 1701-1706.

H.R. 7738 reported from House International Relations Committee, June 23, 1977, House Report 95-459; H.R. 7738 reported from Senate Banking, Housing, and Urban Affairs Committee, October 3, 1977, Senate Report 95-466.

International Trade and Investment Act

Public Law 98-573, title III, approved October 30, 1984.

Title III of Conference Report on H.R. 3398, House Report 98-1156; H.R. 2848 reported from House Energy and Commerce Committee, May 16, 1983, House Report 98-203, pt. I, and House Committee on Ways and Means, September 22, 1983, House Report 98-203, pt. II. H.R. 3398 reported from Senate Committee on Finance, November 10, 1983, Senate Report 98-308; S. 144 reported from Senate Committee on Finance, March 14, 1983, Senate Report 98-24.

Meat Import Act of 1979

Public Law 96-177, section 1, approved December 31, 1979, 93 Stat. 1291, 19 U.S.C. 1202.

H.R. 2727 reported from House Committee on Ways and Means, June 6, 1979, House Report 96-238; H.R. 2727 reported from Senate Committee on Finance, December 7, 1979, Senate Report 96-465.

Reciprocal Trade Agreements Act of 1934

Public Law 73-316, ch. 474, approved June 12, 1934, 48 Stat. 943, 19 U.S.C. 1001, 1201, 1351-1354.

H.R. 8687 reported from House Committee on Ways and Means, March 17, 1934, House Report 73-100; H.R. 8687 reported from Senate Committee on Finance, May 2, 1934, Senate Report 73-871.

Steel Import Stabilization Act

Public Law 98-573, title VIII, approved October 30, 1984.

Title VIII of Conference Report on H.R. 3398, House Report 98-1156; H.R. 6301 reported from House Committee on Ways and Means, September 27, 1984, House Report 98-1089; No comparable Senate bill.

Tariff Act of 1930

Public Law 71-361, approved June 17, 1930, ch. 497, 46 Stat. 590, as amended, codified as amended at various sections of titles 6, 19, and 22.

Conference Reports on H.R. 2667, House Reports 71-1326, Senate Doc. Nos. 161 and 162; H.R. 2667 reported from House Committee on Ways and Means, May 9, 1929, House Report 71-7; H.R. 2667 reported from Senate Committee on Finance, September 4, 1929, Senate Report 71-37.

Trade Act of 1974

Public Law 93-618, approved January 3, 1975, 88 Stat. 1978 codified as amended at various sections of titles 5, 19, 26 and 31.

Conference Report on H.R. 10710, House Report 93-1644; H.R. 10710 reported from House Committee on Ways and Means, October 10, 1973, House Report 93-571; H.R. 10710 reported from Senate Committee on Finance, November 26, 1974, Senate Report 93-1298.

Trade Agreements Act of 1979

Public Law 96-39, approved July 26, 1979, 93 Stat. 144; codified as amended at various sections of titles 5, 13, 19 and 28.

H.R. 4537 reported from House Committee on Ways and Means, July 3, 1979, House Report 96-317; H.R. 4537 reported from Senate Committee on Finance, July 17, 1979, Senate Report 96-249.

Trade and Tariff Act of 1984

Public Law 98-573, approved October 30, 1984.

Conference Report on H.R. 3398, House Report 98-1156; H.R. 3398 reported from House Committee on Ways and Means, June 24, 1983, House Report 98-267; H.R. 3398 reported from Senate Committee on Finance, November 10, 1983, Senate Report 98-308.

Trade Expansion Act of 1962

Public Law 87-794, approved October 11, 1962, 76 Stat. 872, codified as amended at various sections of title 19.

Conference Report on H.R. 11970, Report 2518; H.R. 11970 reported from House Committee on Ways and Means, June 12, 1962; House Report 87-1818; H.R. 11970 reported from Senate Committee on Finance, September 14, 1962, Senate Report 87-2059.

Trading with the Enemy Act

Public Law 65-91, approved October 6, 1917, ch. 106, sections 1-31, 40 Stat. 411, 50 App. U.S.C. 1-44

Conference Report on H.R. 4960, House Report 65-155; H.R. 4960 reported from House Committee on Interstate and Foreign Commerce, House Report 65-85; H.R. 4960 reported from Senate Committee on Commerce, Senate Reports 65-111 and 65-113.

Wine Equity and Export Expansion Act of 1984

Public Law 98-573, title IX, approved October 30, 1984.

Title IX of Conference Report on H.R. 3398, House Report 98-1156; H.R. 3795 reported by House Committee on Ways and Means, September 27, 1984, House Report 98-1091;

DESCRIPTIONS OF MAJOR MULTILATERAL TRADE ORGANIZATIONS

General Agreement on Tariffs and Trade (GATT)

The GATT is a multilateral instrument, currently subscribed to by 92 countries, which has served as the framework for international trade since its inception in 1948. The GATT has evolved into a comprehensive set of rules governing many aspects of international trade. The organization provides a framework within which international trade negotiations are conducted and trade disputes among the world's major trading partners are resolved. The GATT headquarters are in Geneva.

GATT Membership as of November 1986—Contracting Parties

Argentina
Australia
Austria
Bangladesh
Barbados
Belgium
Belize
Benin
Brazil
Burkina Faso
Burma
Burundi
Cameroon
Canada
Central African Republic
Chad
Chile
Colombia
Congo
Côte d'Ivoire
Cuba
Cyprus
Czechoslovakia
Denmark
Dominican Republic
Egypt
Finland
France
Gabon
Gambia
Germany, Fed. Rep. of
Ghana
Greece
Guyana
Haiti
Hong Kong
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Kenya
Korea, Rep. of
Kuwait
Luxembourg
Madagascar
Malawi
Malaysia
Maldives
Malta
Mauritania
Mauritius
Mexico
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Pakistan
Peru
Philippines
Poland
Portugal
Romania
Rwanda
Senegal
Sierra Leone
Singapore
South Africa
Spain
Sri Lanka
Suriname
Sweden
Switzerland
Tanzania
Thailand
Togo
Trinidad and Tobago
Turkey
Uganda
United Kingdom
United States
Uruguay
Yugoslavia
Zaire
Zambia
Zimbabwe

Organization for Economic Cooperation and Development (OECD)

Founded in 1961 and based in Paris, the OECD is the primary organization for industrialized nations to discuss trade and economic matters. The objectives are to achieve economic growth and employment and a rising standard of living in member countries while maintaining financial stability. The 24 member countries use the OECD and its various committees and working groups to conduct both studies and negotiations on particular economic problems and to coordinate their policies for purposes of international negotiations.

OECD Membership

Australia
Austria
Belgium
Canada
Denmark
Finland
France
Germany, Federal Republic of
Greece
Iceland
Ireland
Italy
Japan
Luxembourg
Netherlands
New Zealand
Norway
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom
United States

United Nations Conference on Trade and Development (UNCTAD)

Based in Geneva and associated with the United Nations system, UNCTAD focuses attention on international economic relations and measures that might be taken by developed countries to accelerate the pace of economic and industrial development in the developing countries. The conference has met quadrennially since 1964 in various locations throughout the world. UNCTAD committees meet several times each year between the major conferences and is supported by the permanent UNCTAD Secretariat in Geneva.

Customs Cooperation Council (CCC)

Established in 1952, the Customs Cooperation Council is a 93-member international organization with headquarters in Brussels. It deals exclusively with customs matters. Its objective is to obtain, in the interest of international trade, the best possible degree of uniformity among the customs systems of member nations. The United States became a member on November 5, 1970.

The Customs Service is the lead government agency in dealing with the various activities of the Council, including the work of the Harmonized System Committee. The Customs Service heads the U.S. delegations to the sessions of the Committee. Generally, the Council studies questions relating to cooperation in customs matters, examines technical aspects of customs systems and furnishes information and advice to member states.

SUMMARY OF POSSIBLE ACTIONS UNDER U.S. TRADE REMEDY LAWS

Statutory Provision	Basis for Cause of Action	Administering Authority	Form of Remedy
Antidumping law (19 U.S.C. 1673)	Import sales at less than fair value resulting in material injury (both product- and country-specific).	Commerce (dumping determination); ITC (injury determination).	Antidumping duties equal to margin of dumping.
Countervailing Duty Law (19 U.S.C. 1303, 1671)	Import sales benefiting from foreign subsidies (both product- and country-specific).	Commerce (subsidy determination); ITC (injury determination).	Countervailing duties equal to the amount of net subsidies.
Section 301 (19 U.S.C. 2411)	Violation of U.S. rights under a trade agreement, or any foreign act, policy or practice which is unjustifiable, unreasonable, or discriminatory and burdens or restricts U.S. commerce.	USTR (recommendation); President (final action).	"All appropriate and feasible action" including retaliation in the form of suspension or withdrawal of trade agreement benefits, imposition of tariffs, fees or other import restrictions.
Section 337 (19 U.S.C. 1337)	Unfair methods of competition injuring a U.S. industry or restraining or monopolizing U.S. trade and commerce—usually a patent infringement (product-specific).	ITC (order); President (veto authority).	Exclusion from entry into U.S., or a cease-and-desist order.

SUMMARY OF POSSIBLE ACTIONS UNDER U.S. TRADE REMEDY LAWS—Continued

Statutory Provision	Basis for Cause of Action	Administering Authority	Form of Remedy
Section 201 (19 U.S.C. 2251)	Increased imports which are a substantial cause of serious injury (product-specific from all sources).	ITC (recommendation); President (final action); Congress (disapproval of Presidential action if different than ITC recommendation).	Tariff increases, tariff-rate quotas, quantitative import restrictions, orderly marketing agreements, expedited adjustment assistance
Section 406 (19 U.S.C. 2436)	Increased imports from a Communist country which are a significant cause of material injury (both product-specific and country-specific).	ITC (recommendation); President (final action); Congress (disapproval of Presidential action if different than ITC recommendation).	Tariff increases, tariff-rate quotas, quantitative import restrictions, orderly marketing agreements, expedited adjustment assistance
Section 232 (19 U.S.C. 1862)	Imports which threaten the national security (product-specific from all sources).	Commerce (recommendation); President (final action).	Such action as the President deems necessary to safeguard the national security

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ERRATA

ERRATA

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

OVERVIEW AND COMPILATION OF U.S. TRADE STATUTES

Changes should be made in the print as follow.

Page 60 (footnote)

[1] Some petitions withdrawn were later refiled and either accepted (and remain pending cases) or were rejected.

Page 82 (tabular matter)

El Salvador[1]	2.6	26,020
Costa Rica[1]	1.5	17,583
Honduras[1]	1.0	15,917

Page 198

The 6th line should read as follows:

1970 (49 U.S.C. 1741), as amended by section 13031(h)(2) of the Con-

Page 329

A closing black bracket should be inserted following the word "State." immediately before the heading "Sec. 240. Administration Absent State Agreement."

Page 351

The 10th line should read as follows:

adjustment amount. The minimum quota allocation is 7,500 short